

MAR 02 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Director 

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

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- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.¹

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.²

- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act,³ or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.⁴

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

- fugitive aliens, in descending priority as follows:⁵

¹ This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

² The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

³ As the definition of “aggravated felony” includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

⁴ Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

⁵ Some fugitives may fall into both this priority and priority 1.

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- fugitive aliens who pose a danger to national security;
- fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
- fugitive aliens with criminal convictions other than a violent crime;
- fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
 - previously removed aliens who pose a danger to national security;
 - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - previously removed aliens with criminal convictions other than a violent crime;
 - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.⁶

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls

⁶ ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. See Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

F. No Private Right Statement⁷

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

⁷ This statement was added to ICE Policy 10072.1, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" on February 7, 2011. The policy contained in this memorandum has not been altered or changed.

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U.S. Immigration
and Customs
Enforcement

DEC 08 2009

MEMORANDUM FOR: Field Office Directors and
All Fugitive Operation Team Members

FROM: John Morton
Assistant Secretary 

SUBJECT: National Fugitive Operations Program: Priorities, Goals, and
Expectations

Purpose

This memorandum serves to clarify the enforcement priorities of the National Fugitive Operations Program (hereinafter the program) within the Office of Detention and Removal Operations (DRO) and supersedes previously issued fugitive operations guidance. The existence and continuation of this program are essential to the integrity of the immigration and border controls. Good government is poorly served if, after much time and the expenditure of government resources, final orders of removal are ignored without consequence. Indeed, the sound administration of the nation's immigration system depends on an efficient, fair, and meaningful removal process. As a result, it is the clear policy of this agency that final orders of removal should be enforced and that those who knowingly disobey or evade a final order of removal should be apprehended and removed.

In order to ensure that the program's resources are used efficiently and as envisioned by Congress, it is the policy of this agency that the program focus on its core mission—the apprehension and removal of fugitive aliens.¹ In the interest of public safety and the rule of law, the program's resources may also be used to apprehend and remove (1) aliens who have been removed previously from the United States and then return illegally, and (2) criminal or otherwise dangerous aliens living at large in our communities. As a general rule, the program's resources should not be used to target other classes of removable aliens, although fugitive operations teams may apprehend and remove such aliens if encountered during normal operations.

¹ A fugitive is any alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion or has failed to report to ICE after receiving notice to do so.

Enforcement Priorities

The following three tiers reflect, in order of priority, how fugitive operations teams should focus their resources. Teams must focus the vast majority of resources, at least 70%, on tier 1 fugitives. The remainder should be directed to tiers 2 and 3. The priorities within each tier are also listed below, with level I generally warranting more attention than level II, and so forth. These tiers and levels provide clear guidance to the field but should not be applied so rigidly as to undermine sound judgment when exceptions are warranted by circumstance.² Similarly, the tiers should not be so rigidly interpreted to prevent prioritizing an illegal reentrant with a serious criminal conviction over a fugitive with no criminal history.

Tier 1 Fugitive aliens

- I. Fugitives who pose a threat to national security
- II. Fugitives convicted of violent crimes or who otherwise pose a threat to the community
- III. Fugitives with a criminal conviction other than a violent crime
- IV. Fugitives with no criminal conviction

Tier 2 Previously removed aliens

- I. Previously removed aliens who pose a threat to national security
- II. Previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community
- III. Previously removed aliens with a criminal conviction other than a violent crime
- IV. Previously removed aliens with no criminal conviction

Tier 3 Removable aliens convicted of crimes

- I. Aliens convicted of level 1 offenses, as defined for purpose of Secure Communities
- II. Aliens convicted of level 2 offenses, as defined for purposes of Secure Communities
- III. Aliens convicted of level 3 offenses, as defined for purposes of Secure Communities

With respect to non-criminal fugitive targets in Tier 1, level IV, the Fugitive Operations Support Center (FOSC) and teams should consider that aliens who are the subject of in absentia orders and aliens with pending applications for relief before U.S. Citizenship and Immigration Services are more likely to have viable motions to reopen. For that reason, resources—particularly detention resources—may be better focused on other targets, unless aggravating circumstances offset the possibility of reopening or prolonged proceedings.

To promote efficiency, teams are expected to focus resources on cases with the most current investigative leads, including cases with the most recently issued final orders as these are most

² These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

likely to contain up-to-date contact information. These should be targeted as soon as possible to limit the opportunity for a fugitive to relocate. Teams are expected to act expeditiously if they receive current, time-sensitive leads.

As resources are best spent on cases with the freshest and most reliable leads, FOSC has created a cold case docket for those cases without any investigative leads in the past decade. FOSC will review the cold case docket twice a year to determine if new information has surfaced. New information may cause FOSC to conclude the case is resolved (for instance, because the case was reopened) or return it to the active fugitive docket (for instance, because of new information about the alien's location).

Teams will receive Fourth Amendment training every six months which will focus on the special considerations when apprehending fugitives at their home. Any team member with questions should consult his or her supervisors and consult with the Office of Chief Counsel. Team members are encouraged to engage in surveillance both to promote officer safety and increase the likelihood the team will encounter the targeted alien—rather than aliens who are not in the tiers above and would not otherwise have been the focus of limited government resources.

If during the course of operations teams encounter removable aliens, teams may place those aliens into removal proceedings, even if they are not in one of the three tiers. However, this should not detract attention away from the reason Congress mandated and funded fugitive operation teams—the apprehension and removal of fugitive aliens. In any event, detention resources shall be focused on aliens in the three tiers above and aliens subject to mandatory detention by law. Absent extraordinary circumstances, team members should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm. To detain aliens in those categories, team members must secure approval from the Field Office Director and send a significant event notice (SEN) to headquarters.

Measuring Success

As apprehending and removing fugitives is the program's core mission, field offices' performance will be measured in part by the reduction in the fugitive docket and by compliance with priorities. Each field office and the FOSC should strive to reduce the pool of fugitives by 5% more in FY 2010 than it did in FY 2009. A field office may increase productivity—the reduction in the fugitive pool—by apprehending fugitives or otherwise resolving fugitive cases, even if no arrest is involved. This includes resolving cases by determining that a target has departed the country on his or her own or determining that the case was reopened or the target has since received an immigration benefit. Field offices should not feel such pressure to meet this goal that they lose focus on the priorities and sound use of resources. This goal does not constitute a quota; rather, this goal allows the teams to gage their productivity.

The field should not focus on numbers to the detriment of targeting and arresting the most egregious, violent offenders in their area of responsibility (AOR). To acknowledge the tiered prioritization above, DRO also will track fugitive arrests, by tier, using EARM/FCMS/TECS. Arrests will be separated by tiers, criminal and non-criminal arrests, and indictments and

convictions attributed to teams during operations. This system will credit teams for locating high priority aliens, even if those cases require more time to investigate and close.

Field offices are expected to focus not simply on the apprehension of aliens, but also on their removal. Headquarters will evaluate removals in addition to the metrics above. When fugitives are taken into custody, officers should pay attention to lawful avenues to secure the person's travel documents to reduce detention times and facilitate removal.

Field and National Operations

Field offices have the discretion to conduct operations to advance the program's priorities and accomplish the goal of reducing the fugitive pool. Field offices are encouraged to participate in Operation Cross Check and Operation Secure Streets in collaboration with local United States Attorney's offices. These operations are important as they identify criminal aliens who fall within the three tiers above. Field offices also will be called on to participate in national and strategic headquarters-driven operations. Major operations, whether driven by the field or headquarters, will be coordinated with the Office of the Principal Legal Advisor.

Building Partnerships

Field Office Directors and team members are encouraged to maintain and build positive relationships with federal, state, local, and tribal law enforcement agencies in their AOR. This includes information sharing, consistent with law and policy. Team members are encouraged to advise, and cooperate with, local law enforcement partners when conducting operations. Field Office Directors will coordinate with any local participants in the task force model of the 287(g) program to share information and avoid duplication of efforts.

Field Office Directors also are expected to build relationships with community groups to identify and address concerns about the conduct of fugitive operations. Allegations of misconduct and wrongdoing are referable to the Joint Intake Center (JIC).

Issue Date:
Review Date:



Enforcement and Removal Operations
Fugitive Operations Handbook

FOREWORD

The Fugitive Operations Handbook compiles, for the first time, all current policies, procedures, and best practices established for the National Fugitive Operations Program within Enforcement and Removal Operations. It takes the place of the long-anticipated, never-issued Chapter 19 of the DRO Policy and Procedure Manual.

This compilation incorporates all current Fugitive Operations-specific processes and procedures, although the memoranda cited in the Handbook may contain more detailed information. The Handbook also includes templates for operational plans and operations worksheets. It is an operational guide for Fugitive Operations Teams.

Previously DRO- or ERO-issued documents that are fugitive operations-specific now take on the status of historical reference material or supplemental information. As a result, all such documents will move from "Current" to "Archived Documents" in the ERO Resource Library. When conducting a search for these documents in the Resource Library, remember to search under "Archived Documents."

Fugitive enforcement is guided by the June 30, 2010, ICE memorandum titled "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (ICE Policy Number 10072.1) and the December 8, 2009, ICE memorandum titled, "National Fugitive Operations Program: Priorities, Goals, and Expectations" (ICE Policy Number 11001.1).

(b)(6),(b)(7)(C)

Assistant Director, Enforcement

Date

2/23/10

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PART 1: Fundamentals of the National Fugitive Operations Program (NFOP)

Introduction

The National Fugitive Operations Program (NFOP) identifies and arrests fugitive aliens, previously removed aliens, criminal aliens at large, and certain other fugitives in the United States. Fugitive aliens are aliens who have failed to comply with a final order of removal, deportation, or exclusion; or who have failed to report or appear as demanded by Immigration and Customs Enforcement (ICE). "Others" may include alien escapees; Alternatives to Detention (ATD) violators; fugitives wanted by other law enforcement agencies or countries; and immigration status violators, among others.

The main goal of the NFOP is the reduction of the national fugitive alien backlog using targeted operations based on the best available intelligence and investigative techniques. Additionally, NFOP assets bolster the integrity of the immigration system by targeting and arresting previously removed aliens who have re-entered the United States in violation of the law. NFOP assets are also utilized to provide security to America's communities by targeting at-large aliens with criminal convictions for arrest and removal.

Authority

Pursuant to [Section 287\(a\)\(1\)](#) of the Immigration and Nationality Act (INA), [8 U.S.C. § 1357\(a\)\(1\)](#), as amended, an ICE officer has the authority, without a warrant, to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA § 287(a)(2) provides the authority to make an arrest of an alien who the officer/agent has reason to believe is in the United States in violation of the immigration laws and is likely to escape before an arrest warrant can be obtained. Further, INA § 287(a)(5) provides authority to make general arrests without a warrant for crimes recognized under federal law, to carry firearms, and to execute and serve any order, warrant, subpoena, summons, or other process issued under authority of the United States.

To detain an individual for further questioning, the ICE officer must have reasonable suspicion that the individual:

- Committed a crime, or
- Is unlawfully present in the United States, or
- Is an alien with status who is either inadmissible or removable, or
- Is a non-immigrant required to provide truthful information to DHS personnel upon demand (see [8 CFR 214.1\(f\)](#)).

Responsibilities

Deputy Assistant Director (DAD), Compliance Enforcement Division. Oversees NFOP, including the HQ Fugitive Operations Unit (FOU) and the Fugitive Operations Support Center (FOSC).

Chief, Fugitive Operations Unit. Leads NFOP; serves as main point of contact for all queries about the NFOP from higher level management and the Field Office Directors. Interprets directives of ICE upper management, DHS, Congress, and the Executive Branch and monitors field implementation and reporting of statistical data. Determines geographic locations of Fugitive Operations Teams (FOTs) nationwide.

Chief, Fugitive Operations Support Center (FOSC). Manages and directs the FOSC. Develops leads and analyzes data from multiple sources to support FOT enforcement operations; reviews and updates fugitive cases in the (b)(7)(E) Alien Removal Module (EARM). Reports on the nature and characteristics of the fugitive backlog. Manages the Cold Case docket and is the system owner for the Fugitive Case Management System (FCMS).

Field Office Director (FOD). Oversees local implementation of Fugitive Operations-related policy. Meets NFOP performance goals. Sets policy on rotation and placement of FOT members (FOT locations are determined at headquarters). Fully staffs FOT positions; uses NFOP resources and funding solely to advance the NFOP mission.

Assistant Field Office Director (AFOD). Provides guidance and oversight to FOT SDDOs. Briefs FOD on FOT operations and concerns. During HQ-driven operations, is the main point of contact with the NFOP.

FOT Supervisor. Plans and implements team operations based on guidance and goals set by the NFOP and the FOD. Addresses administrative issues concerning FOT, including performance evaluations, training, leave, and disciplinary actions. Reviews and monitors all FOT processing work: Field Operations Worksheets (FOWs), (b)(7)(E) (b)(7)(E) Enforce Alien Removal Module (EARM), Alien-Files (A-Files), and Target Folders. Communicates and monitors compliance with the most recent processing guidance. Provides on-site leadership both in the field and in the office.

Fugitive Operations Team (FOT). Comprised of one Supervisory Detention and Deportation Officer (SDDO), four Deportation Officers (DOs), one Immigration Enforcement Agent (IEA), and one Detention and Removal Assistant (DRA), conducts enforcement activities based on the policies set by the NFOP and the FOD.

Priorities

The FOT Supervisor assigns cases for review and preparation based on the priorities established under "Enforcement Priorities" in the ICE memorandum, "[National Fugitive Operations Program: Priorities, Goals, and Expectations](#)," dated December 8, 2009, in descending order of priority, as follows:

Tier 1 Fugitives aliens

I. Who pose a threat to national security

- II. Convicted of violent crimes or who otherwise pose a threat to the community
- III. With a criminal conviction of other than a violent crime
- IV. With no criminal conviction.

Tier 2 Previously removed aliens

- I. Who pose a threat to national security
- II. Convicted of violent crimes or who otherwise pose a threat to the community
- III. With a criminal conviction of other than a violent crime
- IV. With no criminal conviction

Tier 3 Removable aliens convicted of crimes

- I. Aliens convicted of Level 1 offenses, as defined for purpose of Secure Communities.
- II. Aliens convicted of Level 2 offenses, as defined for purpose of Secure Communities.
- III. Aliens convicted of Level 3 offenses, as defined for purpose of Secure Communities.

For details, see the above-mentioned ICE NFOP memorandum. As priorities may change rapidly, FOT Supervisors should maintain an open dialogue with the NFOP to remain current.

Training

ICE officers participating in fugitive operations must have successfully completed basic immigration law enforcement training (see [8 CFR 287.1\(g\)](#)).

All Fugitive Operations Team (FOT) members must successfully complete the Fugitive Operations Training Program (FOTP) within two years of assignment to a FOT, or as soon as the training schedule permits. FOT members must obtain and maintain current certifications in Basic First Aid and Cardiopulmonary Resuscitation. FOT Supervisors will provide all officers participating in a fugitive operation with a copy of this handbook. FOT Supervisors will also provide the Senior Field Training Officer with a signed acknowledgment of receipt of this handbook from each permanently assigned FOT member. The Senior Field Training Officer will add these receipts to the officers' training files.

FOTs will receive Fourth Amendment training approved by the ICE Office of Principal Legal Advisor every six months.

FOT Officers are required to attend and pass all quarterly firearms and tactical qualifications consistent with the ICE Firearms Policy and the ICE Use of Force Policy.

Since officers carry different models of firearms, all team members should familiarize themselves with the weapons carried by other team members. For this reason, a second day of Advanced Firearms Training Exercises is considered a best practice to be adopted by the field offices. FOT Supervisors will work closely with the SFTOs to identify training that will improve the skill sets of FOT members, such as officer survival, emergency medical procedures, defensive tactics, and response coordination.

PART 2: Fugitive Operations Team (FOT) Casework

Lead Development

NFOP cases may come from docket management, leads from the Fugitive Operations Support Center (FOSC); the ICE Tip Line (888-DHS-2ICE); (b)(7)(E) and other FOTs, DHS entities, and law enforcement agencies (LEAs).

Once a case or investigative lead is identified as an NFOP case, it belongs with the FOT with geographical jurisdiction. The originating office will officially transfer the A-file, T-File(s), and Work Folder(s) through the National File Tracking System (NFTS) to the responsible FOT Supervisor. The originating office will then forward these files and folder(s) along with the Target Folder and any other lead information to the FOT.

FOTs may also develop leads for criminal aliens by working with probation and parole offices in their AOR. Consistent with local policy, FOTs may take an active role in the apprehension of criminal violators as identified by CIS Fraud Detection and National Security Units. (For background and clarification on this issue, see the memoranda "[Benefits Fraud Units Transfer Of Criminal Alien Referrals from Office of Investigation to Office of Enforcement and Removal Operations](#)" and "[Charging Document Issuance and Processing by Enforcement and Removal Operations of Citizenship and Immigration Services Referral Cases](#)," respectively dated April 8, 2005, and October 30, 2006.)

FOTs should use open sources such as television¹, newspaper, and other media outlets that profile wanted individuals to identify and build Target Folders for high-priority fugitive aliens. However, NFOP must review and approve the target folder based on those sources before the FOT conducts an operation involving a high-priority fugitive.

ICE ERO does not have a confidential informant policy or training program established. FOT members can however use other tools to develop sources of information. An FOT Officer, with an FOT Supervisor's approval, may consider the use of prosecutorial discretion, or one of the variety of Alternatives to Detention as a possible means to continue an individual's productive cooperation.

Before making the decision to exercise prosecutorial discretion, the FOT Officer and Supervisor must carefully review the criminal background and the totality of the circumstances that surround the Subject.

The FOD should always be informed and consulted before anyone is given an incentive to provide information as described above.

Case Management

Docket Management

The FOT Supervisor should divide the cases among the team in a fair and intelligent manner. Docket management includes the careful review of cases on each fugitive docket. This will lead to a systematic review and proper vetting of all cases.

¹ Television programs such as Fox Networks "America's Most Wanted"

Proper docket management allows the FOD and FOT Supervisor to track progress made in reducing the fugitive backlog and make adjustments as needed. It also reduces the chances of unnecessary duplication of work. Fugitive cases in each AOR can be identified through EARM as well as with the assistance of the FOSC.

EARM Update

Update EARM after receiving each investigative lead. Because cases are managed through EARM, updaters must take time to code fugitive cases properly. Anyone taking action or making a decision on a case will note it in clear, concise language in the Case Comments box under the Comments tab. Case officers will periodically review their cases to maintain EARM data quality and integrity.

A-File Review

FOT members will:

- Verify NFOP case status by conducting **mandatory** checks of the following databases:
 - EARM
 - Central Index System (CIS)
 - (b)(7)(E)
 - Board of Immigration Appeals (BIA)
 - National Crime Information Center (NCIC).
- Avoid conflict with other law enforcement investigations by conducting **mandatory** checks of (b)(7)(E) and state and local databases. FOTs should also liaise with local task forces such as the High Intensity Drug Trafficking Areas (HIDTA) Task Force, which may maintain a local deconfliction database.
- Supplement information from other sources by reviewing: Image Storage and Retrieval System (ISRS); Consular Consolidated Database (CCDI); (b)(7)(E)
(b)(7)(E)
(b)(7)(E) public utility records; telephone records; U.S. Postal Service mail covers and address information; state and local police department records; fish and game licenses; and records from departments of motor vehicles, clerks of court, probation and parole departments, correctional institutions, child support enforcement, employment and unemployment departments, financial institutions, insurance databases, educational institutions, state and local birth and death records, Internet data-mining and social-networking sites, the ICE Office of Intelligence, Automated Tracking System—Passenger (ATSP); trash runs; and local business records (e.g., shopper membership cards, video rentals, etc).
- If the fugitive appears to reside outside of the FOT's AOR, update EARM. Establish contact with the FOT with jurisdiction over the apparent new location to request a field investigation. If the alien is located in that jurisdiction, forward the case documents and information to that FOT, following the procedures for case assignment.

Administrative Subpoenas

FOT members use Immigration Enforcement Subpoenas (DHS Form I-138) to compel the appearance and testimony of witnesses and the production of books, papers, and documents, consistent with [8 C.F.R. 287.4](#).

The NFOP collects data on subpoenas from all field offices, including the number of immigration subpoenas requested, the number issued, and the number served. Each FOD must submit these statistics to the HQNFOP mailbox HQDRO, FUGOPS by the close of business each Friday.

Referral to the Law Enforcement Service Center (LESC)

By tapping the resources of other law enforcement agencies to help identify, locate, and arrest fugitives, NCIC acts as a force multiplier. Placing fugitive cases into NCIC via the LESC increases the probability of arrest, providing a service to ICE and the community.

Administrative Warrants: NCIC Entry Requirements

Timely submission of data is key to the effective working of the system. The DRO memorandum, "[Placement of Fugitive Cases into the National Crime Information Center's Immigration Violator File](#)," dated August 28, 2005, sets the goal for submission into NCIC at 120 days after the date the final order was issued.

1. Assigned ERO personnel will review the A-File and run all relevant checks to determine the viability of locating the subject.
 - a. If you do not find a viable address, confirm that the file contains:
 - Warrant of Removal (I-205);
 - FD-249 Fingerprint Card;
 - Photograph; and
 - Record of Deportable/Inadmissible Alien (I-213) or
 - Information for Travel Document or Passport (I-217).
 - b. Update the EARM Case Comments box under the Comments tab. Sample comments include:
 - "Case reviewed by [Field Office Name] Fugitive Operations. No leads found. Information forwarded to LESC for input into NCIC."
 - "Case reviewed by [Field Office Name] Fugitive Operations. Target Folder created. Information forwarded to LESC for input into NCIC."
 - "[Date], Attempted to locate Subject at [Street Address], [City, State]."
 - "[Date], Contacted grandmother [time] at [phone number]. She will bring passport to ERO office at [time]."

- "Negative Contact. No further leads. Information forwarded to LESC for input into NCIC."
- c. Present the A-File to the appropriate mission support personnel, referred to in this Handbook as the Detention Removal Assistant (DRA).
2. Using a color scanner, the DRA will scan the following documents in portable document format (pdf), with a minimum resolution of 600 dots per inch (dpi):
 - Warrant of Removal (I-205), both sides; and
 - FD-249 Fingerprint Card, both sides; and
 - Photograph; and
 - Record of Deportable/Inadmissible Alien (I-213) or
 - Information for Travel Document or Passport (I-217)
 3. The DRA will name the pdf document with the Alien number of the Subject (i.e., "A00 000 000 LAST NAME, First Name.pdf"). Save a copy of the pdf file to the local share drive in the folder designated by the FOT Supervisor.
 4. The DRA will then create an e-mail with a Subject line that reads "NCIC: A00 000 000, LAST NAME, First Name" and attach the scanned documents relating to that Subject. The body of the e-mail should read: "Please accept the attached documents that relate to the Subject referenced in the subject line of this e-mail for input into NCIC."
 5. The DRA will send the e-mail to LSC.NCIC@dhs.gov, with a courtesy copy to the responsible docket officer; and place a copy of the e-mail in the A-file for recordkeeping.

Criminal Warrants: NCIC Entry Requirements

Criminal Warrant NCIC entries must include:

- A copy of the criminal Warrant for Arrest issued by a U.S. District or Magistrate Court, signed by either the Federal District Court Judge, a Magistrate, or other court official.
 - A DHS Form 59, Fugitive Report (see [Appendix 4](#)), which must include:
 - All pertinent information, including but not limited to the mandatory blocks highlighted in red, and;
 - The signature of the case officer and the approving SAIC/RAIC/FOD.
 - For an aggravated felon, criminal history documents such as judgment and conviction records providing sentencing information, qualifying the offense as an aggravated felony; and
 - Supporting documentation such as copies of the criminal complaint, indictment, photo, or fingerprints, if available.
1. Scan the Criminal Warrant, DHS Form 59, and the supporting documents.

2. Following the procedures outlined for Administrative Warrants, submit the Criminal Warrant, DHS Form 59, and supporting documents to the LESC within 24 hours of the issuance of the warrant. If the submission is delayed, state why in Block 32, Remarks.
3. If processing multiple defendants under the same case number, use the case number followed by each Subject's last name e.g., CR-1234-10-Jones, CR-1234-10-Smith.
4. Update EARM to reflect all actions taken in the case.

Target Folder Creation

Compile a "target" folder containing the investigative information needed to locate and arrest an NFOP target. Do not take an A-file into the field. Target folders will contain copies of the following documents as they relate to the NFOP case:

- Signed Field Operations Worksheet (FOW)
- Signed Form I-205 (Warrant of Deportation/Removal)
- Final Order and BIA decisions
- Judicial decisions on removal
- Recent photographs
- Information about family members and known associates
- Fingerprint card
- Initial and subsequent I-213s (Record of Deportable Alien)
- Benefit applications (I-130, G-325A, I-485, etc.)
- Public record database queries
- Mandatory database checks (may be noted on FOW)
- Employment information
- G-166C (Memorandum of Investigation)
- Criminal search warrant
- Criminal arrest warrant
- Miscellaneous information, e.g., driver's license, vehicle registration, firearm registration, passport, travel documents, Social Security card, etc.

The FOT maintains the Target Folder pending completion of the investigation. Do not combine the target folder with the A-file. FOWs and other documents containing intelligence or sensitive information do not belong in the A-file.

ICE "Wanted" Posters

In certain egregious cases, the FOT may create an ICE "wanted" poster (see [Appendix 2](#)). Before releasing it for circulation, however, the FOT Supervisor must confirm that the subject of the wanted poster has been entered into NCIC by the LESC (see NCIC warrant entry requirements, above). This action will enable other law enforcement agencies to arrest the wanted person.

Exceptions to NCIC warrant entry requirements include an escape, threat to national security, NFOP directive, or other exigent circumstances.

Fugitives Located while Incarcerated

If a fugitive is located while incarcerated, file an immigration detainer with the detention facility (I-247) and prepare an I-213. Change the case category in EARM to reflect that the individual is no longer a fugitive (Case Category 5B to 3, 8E to 8C, 8I to 8G). Update EARM screens accordingly.

For statistical purposes, update the Fugitive Case Management System (FCMS) to read "Located/Detainer (I-247 Lodged)." The FOT member lodging the detainer will then refer the case to the field office section that processes detention releases and detainers.

Operational Plans and Requirements

If the FOT's activities will extend beyond the normal scope of daily operations, prepare an NFOP Operational Plan (Op Plan) (see [Appendix 3](#)). Op Plans are required for operations including, but not limited to, those involving the arrest of a large number of targets or specific target groups; those expected to attract media attention; and those extending beyond the geographical boundaries of the FOT's Area of Responsibility (AOR). Op Plans can originate at either the Field Office or headquarters.

Note: Both HQ- and FOD-approved Operations have special statistical reporting requirements. FOT Supervisors coordinate with their assigned HQ NFOP staff officer and, if needed, the FOISC, to meet these requirements.

Juveniles

As with other aspects of operational casework, preparation can solve or at least mitigate many problems. Preparatory planning for every operation should include the possibility that the FOT will encounter a juvenile, i.e., a child under the age of eighteen. Determine the local child protective services (CPS) protocol for referring children.

Involve the Field Office Juvenile Coordinator in the planning process when:

- Surveillance, file review, or any other activity leads you to expect a juvenile encounter during a particular operation; and
- The operation will be large scale.

If it appears that the juvenile(s) involved is a lawful permanent resident (LPR) or U.S. citizen (USC), contact CPS.

Field Office-initiated Op Plans

Use a Field Office-initiated Op Plan when:

- Conceived and driven at the local level;
- Taking place within the field office's AOR; and
- Targeting 10 or more NFOP cases per team per day.

Request the current NFOP Op Plan template and Target List template from your assigned NFOP staff officer.

The FOT Supervisor selects the approved enforcement initiative title (i.e., Cross Check, Return to Sender, Secure Streets, Media Ride-along, etc.) and forwards the Op Plan to the FOD for signature. The FOD returns the signed plan to the FOT Supervisor, who then forwards a copy to the Detention Operations Coordination Center (DOCC) mailbox, DOCC, and NFOP. DOCC notification must occur at least two weeks before the operation whether or not logistical assistance is sought.

At least seven business days before the operation, the FOT will notify NFOP of DOCC's response.

NFOP will notify the FOT of concurrence with the Op Plan.

HQ-initiated Op Plans

An HQ-approved Op Plan is required when:

- Targeted enforcement action(s) will extend beyond a field office's AOR; or
- A target or target list expected to draw significant media or departmental attention, including operations concerning sensitive targets, public officials, political candidates, or religious or political organizations, or requests made by foreign governments; or
- HQ NFOP initiates the enforcement action.

The FOT Supervisor will use the HQ-approved NFOP Operational Plan template and Target List template to generate the Op Plan.

In the case of an HQ NFOP-initiated enforcement action, the Op Plan may be generated from headquarters and sent to the FOT. The FOT Supervisor will prepare or update an Op Plan with guidance from HQ NFOP and forward the Op Plan to the FOD for signature. The FOD will return the signed plan to the FOT Supervisor, who will then forward a scanned copy to the [DOCC](#) and to [HQDRO, FUGOPS](#). DOCC notification must occur at least two weeks before the operation whether or not logistical assistance is sought.

At least seven business days before the operation, the FOT will notify NFOP of DOCC's response.

NFOP will notify the FOT of approval of the Op Plan.

PART 3: Conducting Operations

Surveillance

Field surveillance should precede every operation. You must have a signed FOW before conducting field surveillance. When conducting static surveillance, notify the local LEA with jurisdiction.

GPS Tracking Devices

[Forthcoming.]

Communications

The FOT Supervisor or designated FOT member will notify local LEAs of FOT operations in their jurisdiction. Document notification on the FOW. The responsible officer will document the time of notification, point of contact, and a contact number, along with any issues or concerns raised by local LEAs.

Identify primary and secondary means of communication, e.g., vehicle radios, hand-held radios, cell phones and synchronize communications among FOT members before commencing the enforcement action.

The primary point of contact for criminal and administrative records checks during operations should be the Law Enforcement Support Center (LESC) at 802-872-(b)(6). The National Law Enforcement Support Center (NLESC, also known as Sector Communications, or C-100) at 1-800-X-SECTOR (1-800-973-2867) is also available to assist in conducting record checks and case workups. Contact both the LESC and NLECC before conducting field operations to verify that contact information and profiles are on record and properly inputted. Notify the LESC and/or NLECC in advance of large-scale operations so that they may adjust their staffing levels to better assist FOTs.

Law Enforcement Identification

Teams should take environmental conditions into account when planning operations and deciding the level of officer visibility. Factors to consider include officer safety and public perception.

High-visibility operational environment

When conducting High Visibility operations, acceptable means of identification include vest placards or clothing clearly identifying you as a law enforcement officer.

Low-visibility operational environment

In certain situations, high visibility could hinder the operation or endanger officer safety. If environmental or operational concerns dictate a low-visibility approach, you may wear clothing that helps you blend into the environment.

Whenever your weapon is visible, your ICE badge must be visible. This means you must either wear the ICE badge on a chain/lanyard around your neck (recommended) or clipped to your belt, in plain sight--unobstructed by any clothing.

Pre-operational briefing

An operational briefing will precede every enforcement action, absent exigent circumstances. Representatives from other LEAs involved in the operation should participate in the briefing.

The briefing will cover information in the target folder, including the type of warrant being executed (administrative arrest, criminal search, or criminal arrest). Explaining the scope of an ICE administrative warrant is particularly important for officers from other LEAs with limited or no experience participating in ICE administrative arrests.

During the briefing any other operational concerns will be addressed, to include medical, communications, and equipment issues.

Ruses

A ruse is a tactic designed to control the time and location of a law enforcement encounter. The result is improved safety for the officers and the public by reducing the opportunity for the target to flee. FOT use of ruses will comply with the ICE memorandum, "[Use of Ruses in Enforcement Operations](#)," dated August 22, 2006.

A ruse involving the impersonation of a federal, state, local, or private-sector employee is contingent on permission from the proposed cover employer. Your point of contact must be an executive with the authority to grant permission for the impersonation. Generate a memorandum documenting the cover employer's concurrence with the plan, and place it in the target folder.

Within 48 hours of receiving a complaint or concern from the cover employer, the FOT Supervisor will notify the FOD and NFOP Chief, who will notify the Deputy Assistant Director for Compliance Enforcement.

The use of ruses involving misrepresentation as a religious worker, health and safety worker/inspector, or census takers is prohibited without approval from the ICE Assistant Secretary.

Consent

Because neither a Warrant for Arrest of Alien (I-200) nor an administrative Warrant of Removal (I-205) authorizes you to enter the subject's residence or anywhere else affording a reasonable expectation of privacy, you must obtain voluntary consent before entering a residence. You may not coerce consent. (See "[Documentation of Consent in Enter and Search](#)," dated January 19, 2010.)

Consent is involuntary when it is the product of coercion or threat, express or implied. Other factors affecting voluntariness include: an officer's claim or show of authority, prior illegal government action, mental or emotional state of the person, cooperation or lack thereof, and custody. Officers need not advise the subject that consent may be refused, although whether such an advisory is given is a factor in determining the voluntariness of the consent. Do not

enter, search, or remain inside a residence without the consent of a person with apparent authority, who is at least 18 years of age.

When you request and receive consent, use the FOW to record the name of the person giving consent, the time and scope of the consent, and other relevant factors, such as the names of witnesses to the granting of consent. Also record the time you complete the search.

If an arrest is made, provide the consent information in the arrest narrative of the I-213, including the names of any witnesses to the consent.

If consent is denied, document the denial in the FOW, noting that the FOT departed without entering the residence. Likewise, if the FOT must leave the residence because consent is withdrawn before any FOT member sees the target, note the time consent was withdrawn on the FOW.

Travel Documents

Try to obtain a travel document and birth certificate at the time of arrest. If not in plain view or on the alien's person, request consent to search in areas where documents may be found. Verbal consent in the presence of at least one other LEO is acceptable.

Vehicle Stops and Pursuits

FOT members who have completed FLETC vehicle stop training may conduct vehicle stops. Vehicles used to perform these stops must have emergency equipment in compliance with state laws.

Do not follow a target who fails to pull over. ERO law enforcement officers are not authorized to engage in vehicular pursuits.

Arrests

Planned arrests should take place between 6 a.m. and 10 p.m. You may proceed with an arrest after 10 p.m. and before 6 a.m. only with the FOD's approval. In such cases, record the FOD's approval on the FOW and in the I-213 narrative, the EARM Case Comments box under the Comments tab, and in FCMS.

Do not make an arrest at a funeral or other religious ceremony or in a sensitive area (place of worship, day-care center, school, hospital, nursing home, etc.), except under exigent circumstances (see ICE memorandum, "[Field Guidance on Enforcement Activities At or Near Sensitive Community Locations](#)," dated July 3, 2008). Arrests to be conducted at an institution of higher learning (community college, university, vocational school, etc.) must have the cooperation of campus authorities. Otherwise, await the target's departure from the campus before making the arrest.

A planned arrest requires at least two law enforcement officers, one of whom is an ICE Deportation Officer or SDDO. Always identify yourself as an ICE law enforcement officer at the time of arrest, if you have not already done so.

Special Considerations for Arrest

Upon arrest, ask the Subject at least these questions:

- Do you have any medical issues or concerns?
 - If so, do you have medication or an assistive device to take with you?
- Do you have any children or other custodial responsibilities?
 - If so, are you the sole caregiver?
- Do you have a travel document?

Juveniles

Upon encountering a juvenile, the FOT Supervisor or team leader will contact the Field Office Juvenile Coordinator (if not already on-site) for guidance. Regardless of the juvenile's citizenship, the FOT Supervisor or team leader will carefully weigh the circumstances of the encounter in deciding whether to exercise prosecutorial discretion. Discretionary release options include placing the custodial parent(s) or guardian(s) in the Alternatives to Detention (ATD) program; releasing on bond, Order of Recognizance, Order of Supervision, etc.

If uncertain about whether the young person in question is in fact a juvenile, refer the case to the Field Office Juvenile Coordinator.

In every case:

- Identify the parent(s), family member(s), or legal guardian(s) of each juvenile you encounter during an operation—regardless of the juvenile's citizenship. Document all actions taken.
- Obtain complete biographical information of everyone involved, including witnesses. Document this information on case-related forms (e.g., the I-213 and G-166) and databases (e.g., the Case Comments box under the Comments tab in EARM).
- Separate juveniles and family units from unrelated adults (*Flores settlement agreement*).

USC/LPR Juveniles

If the fugitive alien parent or legal guardian asks that you release the USC/LPR juvenile to a specified **third party**, facilitate contact between the fugitive alien and the third party.

- Document the request—preferably in the fugitive alien's own handwriting.
- Verify the identity of the third party through government issued identity cards before releasing the USC/LPR juvenile into that person's care.

If the parent or legal guardian is subject to **mandatory detention** and the parent/legal guardian does not specify a custodial third party, contact CPS to arrange suitable placement of the USC/LPR juvenile.

- Seek guidance from the FOD if local CPS is unresponsive. It may be necessary to coordinate with local law enforcement to complete the transfer.
- If necessary, document the inability of local CPS to take timely custody of the juvenile in memorandum format.
- If the juvenile or any proposed third party caregiver is known or suspected to be involved in criminal activity (for example, trafficking), contact local law enforcement and/or CPS to review the suitability of placement decisions.
- Forward copies of relevant documents to local CPS for further processing.

Prosecutorial Discretion

As a rule, FOT members will not take into custody aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm (see ICE NFOP memorandum dated December 8, 2009). FOT members may exercise discretion within the limits of agency authority and are expected to do so in a judicious manner throughout the enforcement process.

For more information on prosecutorial discretion, see ICE memorandum, "[Prosecutorial and Custody Discretion](#)," dated November 7, 2007.

Post-Operational Debrief

The FOT Supervisor should hold a debriefing session after the enforcement action to address safety issues and evaluate the operation.

PART 4: Processing Cases

FOTs will follow standard processing procedures for the removal of an alien with a final order (see the CAP/FUGOPS Quick Reference Processing Guide at (b)(7)(E)) FOT Supervisors are responsible for implementing any superseding or additional guidance sent out by the NFOP.

Officers will also update FCMS and EARM with criminal activity, case category changes, and case actions. Concisely note the arrest and any special circumstances surrounding the case in the Case Comments box under the Comments tab. If an A-file has to be requested from the National Records Center or another field office, the processing FOT officer will make the request and document it in the A- or T-file and EARM.

Review cases for prosecutability. Present amenable cases to the Assistant U.S. Attorney or refer them to the Violent Criminal Alien Section (VCAS) unit or prosecution officer. An officer will establish a case in (b)(7)(C) and complete a Report of Investigation (ROI). See the [DRO \(b\)\(7\)\(C\) Case Management User Guide](#).

When transferring a case to the detained docket, provide the travel document and birth certificate, if available, and, from the target folder copies of the signed I-205, final order of removal and BIA decisions and any judicial decisions on removal.

Do not place FOWs or investigative paperwork in the A-file. The Field Office must maintain Target Folders indefinitely, pending further guidance.

Reporting Requirements

FCMS

Enter daily enforcement activities into FCMS as they occur, but no later than midnight Friday, as follows:

- **Arrest:** If applicable, select "Arrest" from the "Action" drop-down menu.
- **Located/Detainer (I-247 Lodged):** Select "Located/Detainer (I-247 Lodged)" from the "Action" drop-down menu after locating and placing a detainer on an individual detained by another agency.
- **Case Category Changed:** If the fugitive case category (5B, 8E, or 8I) is no longer appropriate, select "Case Category Changed" from the "Action" drop-down menu.
- **Case Closure:** If the alien is no longer a fugitive and the case should be closed, select "Case Closure – Self Removal," "Case Closure – Deceased," "Case Closure – Benefits REC'D," or "Case Closure – Removed" from the "Action" drop-down menu.

Exhausted Leads

If all leads are exhausted, as confirmed by the Fugitive Alien Cold Case checklist, generate a Report of Investigation (Form G-166C) and give it to the FOT Supervisor for review. The FOT Supervisor will review the G-166C to verify that all investigative leads have been pursued.

NFOP has initiated a process for handling cold cases (see DRO memorandum, "[Designation of Cold Case Fugitive Files](#)," dated September 4, 2009). For information on this program, contact your FOSC staff officer.

Special Activities

ATD Violations

The FOT Supervisor should work closely with the Field Office's ATD unit to establish a local plan of action for an ATD violation.

ATD violations are often well-planned events that require immediate action to recover an ATD violator. Therefore, open communication between the FOT and ATD is crucial. The likelihood of recovery decreases substantially as the time between violation and referral to the FOT increases.

The ATD program has an established reporting procedure for ATD violations different from escapes. The ATD officer takes the lead on reporting unless the FOD decides otherwise.

Escapes

In the event of an escape, the FOT Supervisor will be the officer in charge of the escape investigation. The FOT will be responsible for the investigation, tracking, and locating of the escapee. A number of very specific reporting actions need to take place in the event of an escape (see DRO memoranda, "Escape Reporting," dated July 14, 2006; and "Standard Operating Procedure, Escapes and Releases," dated December 11, 2006).

Complete and fax an Escape Worksheet (see [Appendix 5](#)) to the HQ ERO Detention Management Division within 24 hours of the escape.

Fugitive Alien Removal (FAR) Requests

A FAR request concerns an international fugitive who has an outstanding Criminal Arrest Warrant issued under the authority of the criminal justice system in the country where the criminal activity took place, provided:

- the international fugitive's crime is also considered a crime within the United States;
- the requesting government has provided evidence of the existence of the arrest warrant through official correspondence such as the issuance of an (b)(7)(E) Red Notice (b)(7)(E) Diffusion message; or actual, translated copy of the warrant; and

- the requesting government has agreed to expeditious issuance of travel documents to facilitate the target's return, if necessary.

When (b)(7)(E) issues a FAR request (Red Notice, Diffusion Message, or Special Notice) for an international fugitive believed to be in the United States, NFOP will alert the FOT Supervisor with jurisdiction.

Liaison and Task Forces

FOT members are encouraged to interact with other law enforcement agencies, task forces, and non-governmental organizations to foster cooperative relationships. Officers may, with approval from the FOD, serve on law enforcement task forces that share common goals with the NFOP and contribute to the ERO mission as a force multiplier. See the "Building Partnerships" section of [ICE Directive 11001.1](#).

Media

Do not interact with media representatives. Refer media inquiries to the FOD, who will coordinate with the ICE Office of Public Affairs.

Refer requests for "ride-alongs" to the FOD, who will coordinate with the Public Affairs Office, and HQ NFOP. The FOT Supervisor will submit an operational plan and target list to the FOD and HQ NFOP.

Appendix 1: Field Operations Worksheet

Enforcement and Removal Operations Field Operations Worksheet



U.S. Immigration
and Customs
Enforcement

Case Officer:							
Name:				AKA:			
Country of Citizenship:							
File Number:		Sex:		Date of Birth:		Age:	
Height:		Weight:		Eyes:		Hair:	
Complexion:		Scars, Marks and/or Tattoos:					
FBI Number:		Social Security Number:		SID:			
Driver License Number:		Issuing State:					
Vehicles:		Spouse:					
Immigration History		EARM Updated:		EOIR Contacted:			
CIS:		NCIC WP:		IJ DEC/DATE:			
VD Exp Date:		BIA Dec/Date:		VD Exp Date:			
Other Litigation:		Benefits Checks					
		ABC	TPS	Family Unity	NACARA	DED	CAT
		[]	[]	[]	[]	[]	[]
CRIMINAL HISTORY				PHOTO			
1.							
2.							
3.							
4.							
5.							
6.							
LAST KNOWN ADDRESS							
Address:							
City:		State:					
Telephone Number:							
Secondary Address:							
Employment:							

Appendix 1: Field Operations Worksheet

SITUATION / MISSION / INVESTIGATIVE LEADS
--

EQUIPMENT / CLOTHING

Team:		Officer/Agency:		Officer/Agency:	
		Officer/Agency:		Officer/Agency:	
		Officer/Agency:		Officer/Agency:	
Team:		Officer/Agency:		Officer/Agency:	
		Officer/Agency:		Officer/Agency:	
		Officer/Agency:		Officer/Agency:	

COMMUNICATIONS			
Type:	Channel:	Frequency:	Team/Individual:

LAW ENFORCEMENT NOTIFICATION AND CASE DECONFLICTED				(b)(7)(E)
Agency:		Name:		Telephone:
Agency:		Name:		Telephone:
Agency:		Name:		Telephone:

EMERGENCY MEDICAL SERVICES/TRAUMA CENTER			
Name:	Telephone:		
Location:			
Name:	Telephone:		
Location:			

Date of Operation:	Time of Operation:	Justification for After Hours Operation:	
Supervisory Concurrence		FOD/DFOD/AFOD Approval	
CONSENT	Name of Consent Provider:	Scope of Consent:	Time Consent Granted:
CONSENT	Witness to Consent:	Time Search Completed:	Time If Consent is Withdrawn:
RESULTS	Date of Arrest:	Location of Arrest:	Additional Information:

U.S. Department of Homeland Security
Immigration and Customs Enforcement (ICE)
Field Office



WANTED

For Immediate Arrest and Deportation

NOTICE TO ARRESTING AGENCY: Before arrest, validate warrant through Immigration and Customs Enforcement, Washington Field Office, (202) 345 (b)(6) or call the ICE Law Enforcement Support Center at (802) 872 (b)(6) (b)(7)(C)

NAME: LAST, First Middle

ALIAS: LAST, First Middle

(b)(7)(E)

ALIEN NUMBER: A# (b)(6), (b)(7)(C)

Physical Description:

(b)(6), (b)(7)(C)

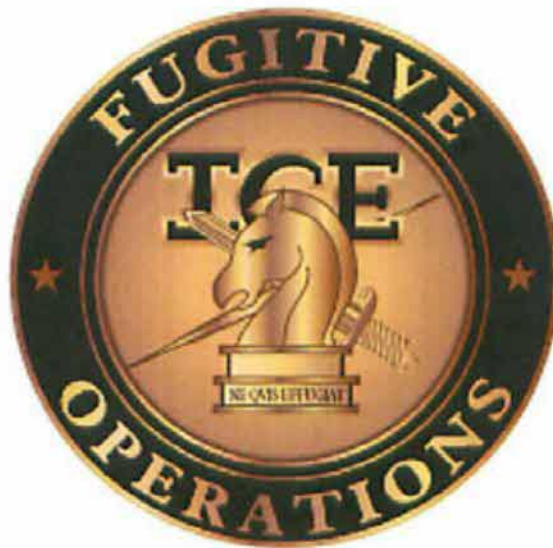
(b)(6), (b)(7)(C)

WANTED FOR: DEPORTATION

MISCELLANEOUS INFORMATION: Convicted Annoy Molest Child

If arrested or whereabouts known, notify the local ICE Enforcement and Removal Operations office telephone: (123) 456 (b)(6) or contact WAS Fug Ops at (123) 456 (b)(6)

XXXX Field Office
Fugitive Operations Team



LIMITED OFFICIAL USE

HEADQUARTERS
FUGITIVE OPERATIONS PLAN:
ENFORCEMENT AND REMOVAL OPERATIONS

Appendix 3: Operational Plan (Sample)

FIELD OFFICE

Operation Return to Sender/Secure Streets/Cross Check

Dates: Month XX-XX, 20XX

I. Situation

The objective of Operation "Return to Sender/ Cross Check / Secure Streets" is to apply an organized, methodical approach to the location and arrest of ICE fugitive aliens within the XXXX Field Office Area of Operational Responsibility (AOR). The primary purpose of this operation is to reduce the backlog of fugitive aliens in the XXXX AOR.

The Field Office Director, Deputy Field Office Director and Assistant Field Office Director have been briefed on this operational plan, and support its execution upon approval from HQ ERO.

A) Targeted Fugitive Aliens – (Number of Targets)

Number (XX) ICE fugitives have been identified and will be targeted during this operation. Of this number, number (XX) are criminal aliens, and none are non-criminals. (If Applicable) In addition, number (XX) Cross Check and/or Secure Street targets have been identified. Of this number, number (XX) are criminal aliens, and none are non-criminals. (See Attached handout for target list.)

B) Hours of Operation

Team members will conduct necessary pre-operational surveillance as resources permit. Operational hours will be from 0600 hrs to 2200 hrs each day. Although the operational hours for conducting arrests will be from 0600 hrs to 2200 hrs daily, the team leader(s) will determine the actual duty hours. No operation will begin prior to 0600 hrs or after 2200 hrs, unless the Field Office Director has reviewed the case, and given approval based on specific justification for each case (attachment three). All activities will be conducted pursuant to the National Fugitive Operations Program Policy and Procedures.

Supervisory staff will change shift hours as needed in order to facilitate the operation. Operational hours will be between XXXX hrs and XXXX hrs.

C) Local Situation

The XXXX Fugitive Operations Team(s) will conduct the operation with support from other resources from the XXXX ERO Office as well as the XXXX local Police or Sheriff's Department, and other participating Law Enforcement agencies. The Field Office Director has committed all necessary resources within his or her jurisdiction.

Appendix 3: Operational Plan (Sample)

D) Operational De-Confliction

OI has been advised of the operation and has stated that they do not anticipate any conflict in the area and have **agreed/declined** to participate. No additional request for assistance was made by ERO. The target list has been queried in **(b)(7)(E)** and **(b)(7)(E)** to ensure de-confliction with OI and other law enforcement entities.

E) Local Law Enforcement Agencies (LEAs)

The Fugitive Operations Team SDDO shall advise local law enforcement agencies (LEAs) prior to the execution of any headquarters approved fugitive operation plan. The standard operating procedure for local law enforcement agencies will vary from location to location and should be established through proactive liaison. In the presence of exigent circumstances, it may be prudent not to provide notification to LEAs of impending fugitive operations within your jurisdiction. If indeed this is the case, the Field Office Director must be made aware of these circumstances and concur with written justification not to notify the local LEAs.

F) Community Issues or Politically Sensitive Issues

Three (3) days prior to the execution of the operation, the Field Office will provide the Office of Public Affairs (OPA) and Office of Congressional Relations (OCR) with the specifics of the operation, to include the operational dates and location of the initiative. **This operation may result in negative community response due to area being designated a "Sanctuary City" or other social / political issues currently taking place.**

G) Juveniles

The presence of juveniles at a target location, or in the care of a fugitive, will be explored during initial investigation, surveillance and diligent research of available indices. In the event that children are identified, or likely to be encountered at a particular residence; family members, care providers and community, as well as state and county juvenile resources, will be examined and a plan of care for the juveniles will be addressed prior to the commencement of operations. **List names and ages of known juveniles, and plan of care- including care giver contact name and numbers. If no juveniles on target list state so here.**

If unaccompanied alien juveniles are encountered, the Office of Refugee Resettlement (ORR) will be notified at 202-401 **(b)(6)** after all processing tasks are performed.

In the event that juvenile(s) are present, and their presence was not anticipated during operational enforcement activities, the SDDO and Team Leaders may need to seek assistance from the state or local governmental agency responsible for juvenile issues, i.e. Child Protective Services (CPS). As such, the SDDO and Team Leaders are in possession of the agency's appropriate contact numbers, to be used as deemed necessary throughout the entirety of the operation. **List agency names, contacts and phone numbers here or add as an attachment and state so.**

Whenever possible, juveniles will be placed in the care of immediate family members that have no ascertainable criminal history. If there are no other options, sole care givers who are subject to removal, that have no ascertainable criminal record may be placed on an Order of Supervision with SDDO/AFOD approval.

Appendix 3: Operational Plan (Sample)

H) Prosecutions

In instances where an alien is amenable to prosecution, the case will be presented to the United States Attorney's Office/State Attorney's Office. If the case is accepted for prosecution, an I-247 (Detainer) will be filed with the agency assuming custody of the alien. If the United States Attorney's Office/State Attorney's Office declines to prosecute, the declination will be recorded in the file.

I) Gangs

In the event that ICE personnel encounter an alien affiliated with a street gang, officers must record the appropriate information on form I-213 and photograph any tattoos. A copy of the I-213 and photos will be forwarded to the officer responsible for entering the subject's information into the ICE gang database. Additionally, in houses where gang tags are prevalent, photos will be taken, as well as a photo of the front of the house for future officer safety concerns.

II. Mission.

Operation "Return to Sender / Cross Check / Secure Streets" is an effort to apply an organized, methodical approach to the location and arrest of ICE fugitive cases within the XXXX Field Office(s) AOR. Additionally, to identify, arrest and process for removal any criminal aliens residing in XXXX Field Office AOR. The sustained cooperation of other Law Enforcement Agencies (LEAs) throughout the area is paramount in order to be successful in this initiative.

Execution.

A) Directors Intent

This operation is being conducted pursuant to the National Fugitive Operations Program Policy and Procedures (Ch.19). The mission of the National Fugitive Operations Program is to reduce the backlog of ICE fugitives throughout the United States.

B) Concept of Operations

The operation will consist of number (XX) designated arrest teams in the area of operational responsibility (AOR). The teams will consist of members of the XXXX Fugitive Operations Teams (FOTs); the teams will also be assisted by Deportation Officers (DOs) and Immigration Enforcement Agents (IEAs) from CAP, detained / non-detained sections of XXXX ERO. One DO will be assigned as the Team Leader (TL) for each team and one will be assigned as the File Control Officer (FCO). The teams will be assigned unmarked vehicles as well as secure transport vehicles for their use.

As arrest efforts progress, team resources may be reassigned to other geographical areas to meet operational needs or returned to their official duty posts as deemed appropriate by the SDDO. The law enforcement liaison officer will be responsible for establishing liaison with local law enforcement offices in the areas that arrest efforts will be conducted. All participating officers will be fully equipped with both deadly and non-deadly force equipment and personal body armor.

Beyond identifying themselves verbally as law enforcement officers/agents, ERO enforcement personnel utilize law enforcement identifiers, such as neck badges, belt badges, and outer

Appendix 3: Operational Plan (Sample)

garments affixed with ICE identifiers. In order to ensure uniformity, if utilized during enforcement operations, outer garments must be prominently affixed with both the words "ICE" and "Police."

This operation will consist of **number (XX) days** of enforcement activity being executed throughout the **XXXX AOR** from **Month, XX, 20XX**, through **Month, XX, 20XX**.

Phase I: **Month, XX, 20XX**: Operational briefing at **XXXX** hours at the **XXXX**. All officers participating in the operation will attend the pre-operational briefing.

Phase II: **Month XX, 20XX to Month XX, 20XX**: Officers from the **XXXX** FOTs will deploy throughout the **XXXX area** to initiate arrests at residences and places of employment.

Phase III: **Month, XX, 20XX**: If deemed necessary, the **XXXX** ICE Public Affairs Office will issue a press release following the completion of the operation once approved by the FOD.

C) Tasks

1. Fugitive Operations Support Center (FOSC): A copy of the Operational Plan and target list has been sent to the FOSC.
2. The Law Enforcement Support Center (LESC): Is available 24 hours a day, seven days a week and can provide support to Fugitive Operations Teams conducting operations. It is recommended that you provide all officers/agents participating in the operation the contact number for the LESC.

Detention Operations Coordination Center (DOCC): Detention space is **limited / suitable** within the **XXXX AOR**, and detention locations have been identified. Although DOCC assistance was not requested they have been provided a copy of this operational plan and have concurred with the operation. The DOCC has been provided a copy of this Operational plan and their assistance was requested, the DOCC has concurred with the operation and will be providing the following assistance.

D) Safety and Logistics

1. Mandatory Element: **Safety is paramount.** Officers will not engage in high/low-speed vehicle pursuits. Officers will carry and have on their person non-lethal force weapons, service-issued firearms and personal body armor.

Beyond identifying themselves verbally as law enforcement officers/agents, ERO enforcement personnel utilize law enforcement identifiers, such as neck badges, belt badges, and outer garments affixed with ICE identifiers. In order to ensure uniformity, if utilized during enforcement operations, outer garments must be prominently affixed with both the words "ICE" and "Police."

2. ☐ No training will be necessary prior to this operation.
3. Primary processing location: All detainees will be transported to the **XXXX** for processing.

a. Secondary detention and processing site(s) to be determined as needed.

Appendix 3: Operational Plan (Sample)

- b. The SDDO will coordinate requests for additional staff to support the enforcement operation. Requests will be made through the Operations AFOD with concurrence from the [REDACTED] Field Office Director.
4. Logistics.
- a. Lodging and per diem expenses will not be required for the operation. In the event that the need arises to utilize lodging and per diem, it will be funded at the local level.
 - b. No Health & Safety inspection required for any facility or equipment being utilized for this operation.
 - c. No contracts need to be reevaluated.
5. Removal Efforts: It is the intent of the Field Office Director to expeditiously remove all ICE fugitive aliens and non-fugitive aliens from [REDACTED] the United States. The below actions have been performed to facilitate this objective:
- a. Once arrested, all detainees will be transported to the [REDACTED] for initial processing. All files will be reviewed by the Fug Ops Team Leader/SDDO for legal sufficiency prior to the alien being transferred to an appropriate detention facility.
 - b. Each operational team has been instructed to secure any and all legally issued identity documents for all arrestees who will require a travel document for removal. All teams will make every legal effort to secure these documents prior to departing the arrest location. Obtaining these documents at the time of arrest will [REDACTED] greatly decrease time spent in detention for all cases.
 - c. All non-fugitive arrests that require a Notice to Appear will be [REDACTED] presented with the option of a Stipulated Removal to aid in the reduction of detention time. The [REDACTED] and [REDACTED] have been advised and contacted as to the availability to approve stipulated removals during the operation.
 - d. When appropriate, a form of alternative detention will be utilized.
[REDACTED]

E) General Reporting Requirements

1. Daily Reports: Submitted to the AFOD and HQ FUGOPS utilizing the HQ approved Enforcement Activity Report spreadsheet.

Via/Transmission: E-mail (HQERO, FUGOPS)
Due: 2400 daily
Period Covered: That day's 24-hour period (0001-2400 hours)
2. Weekly Reports: Standard HQ FUGOPS reporting via the FCMS system.
3. Significant Event Notification (SEN): A SEN / SIR / SPEAR will only need to be submitted if events or incidences occur that warrant their generation in accordance with established policy and procedures.

Appendix 3: Operational Plan (Sample)

4. Report Format: At the conclusion of field operations the Team Leaders will ensure that the Command Center and Processing Teams properly update FCMS with all arrests by COB each day.
5. A/S Notes: A/S notes will only need to be submitted if events or incidences occur that warrant their generation in accordance with established policy and procedures.

F) After Action Reporting Requirements

1. Initial after action conferences will be conducted as follows:
 - a. Key operational personnel involved in the final Phase(s) of the enforcement operation will be held on **Month XX, 20XX** at the **XXXX**.
2. Format: The format for issues will be:
 - a. Topic
 - b. Discussion
 - c. Recommendation(s)
3. Formal after action report: A memorandum of results will be generated and forwarded to the FOD for review.
4. **XXXX** ICE Public Affairs will coordinate with the FOD and generate a press release upon completion of the operation. **ICE Public Affairs contact number(s)**

G) Command and Control

1. Primary means of communication will be via radio, telephone and E-mail.

AUTHORIZING OFFICIAL

Field Office Director
Field Office

APPROVING OFFICIAL

Assistant Director, Enforcement
Enforcement and Removal Operations

Appendix 3: Operational Plan (Sample)

TABS:

TAB A: Operational Support

Attachment 1: CPS Contacts

Attachment 2: Supporting Agency Contact Information

Attachment 3: Other than normal operational hour's justification

Handout: Complete target list

DISTRIBUTION:

FOD

DFOD

Operations AFOD

Appendix 4: Fugitive Report (DHS Form 59)

(b)(7)(E)

Appendix 3: Operational Plan (Sample)

FUGITIVE REPORT INSTRUCTIONS

Red fields are mandatory.

Block 1 - Date of Report	Enter date of report. If date is more than 24 hours from the Date of Warrant, explain in Block #32.											
Block 2 & 3 - Originating Office/ Case Number	Enter office name and case number. Check box if HIDTA or OCDETF investigation.											
Block 4 - Check Boxes	Check all that applies to Fugitive. In Block #32, explain why the Armed/Dangerous and/or Suicidal Tendencies block(s) were checked. Use additional pages if necessary.											
Block 5 - Name	Enter full name (Last, First, Middle). If subject has more names, use Block 30, Aliases.											
Block 6 - Date of Birth	Enter date of birth using 6 digits. If more, use Block 29.											
Block 7 - Birthplace	City or town, State and Country of birth.											
Block 8 - Race/Sex	<table border="0" style="width: 100%;"> <tr> <td>Race Codes</td><td>Sex Codes</td></tr> <tr> <td>W=White</td><td>A=Asian or Pacific Islander</td><td>M=Male</td></tr> <tr> <td>B=Black</td><td>U=Unknown</td><td>F=Female</td></tr> <tr> <td>I=American Indian</td><td>(Note: Records for Hispanics should be entered with the race code most closely representing the individual)</td><td>U=Unknown</td></tr> </table>	Race Codes	Sex Codes	W=White	A=Asian or Pacific Islander	M=Male	B=Black	U=Unknown	F=Female	I=American Indian	(Note: Records for Hispanics should be entered with the race code most closely representing the individual)	U=Unknown
Race Codes	Sex Codes											
W=White	A=Asian or Pacific Islander	M=Male										
B=Black	U=Unknown	F=Female										
I=American Indian	(Note: Records for Hispanics should be entered with the race code most closely representing the individual)	U=Unknown										
Block 9 - Height	In feet and inches. Minimum is 4' to a max of 7'11". If the information is unknown, enter "Unknown" and an estimate in Box 32, "Remarks".											
Block 10 - Weight	In pounds. Minimum of 050 and maximum of 499. If the information is unknown, enter "Unknown" and an estimate in Box 32, "Remarks".											
Block 11 - Eye Color	Brown, Blue, Green, etc.											
Block 12 - Hair Color	Self-explanatory											
Block 13 - Skin Tone	Light, Medium, or Dark											
Block 14 - (b)(7)(E)	If known											
Block 15 - Fingerprint Classification	If known											
Block 16 - Scars/Marks/Tattoos	Self-explanatory											
Block 17 - Operator License Number	Driver's License number											
Block 17 - License State	State where license was issued											
Block 17 - Year Expires	Year license expires											
Block 18 - Warrant Number	Self-explanatory											
Block 19 - Date of Warrant	Date Warrant was issued											
Block 20 - Warrant Type	i.e., Arrest											
Block 21 - Bond	Amount in dollars, if known											
Block 22 - Charge	Describe charge or, if known, NCIC offense code.											
Block 23 - Court of Jurisdiction	Court where warrant was issued											
Block 24 - Social Security Number	Self-explanatory. If more, use Block 29.											
Block 25 - Citizenship	If known, country where citizen, not necessarily birth country											
Block 26 - Alien Registration Number	Self-explanatory, if known											
Block 27 - Passport Number	Self-explanatory; if more, use Block 29, Other Miscellaneous Numbers.											
Block 28 - State Agency NBR (SID)	If known, this is the identification number of a state criminal history record. Include state.											
Block 29 - Last Known Address/ Other Miscellaneous Numbers	Last known address: Other identification cards, identifications, or numbers of subject. Additional dates of birth. Other Social Security Numbers. List numbers of cell phones, pagers, associate phone numbers used by fugitive or family.											
Block 30 - Aliases	Other names and aliases of the subject											
Block 31 - Photo	Attach photo to DHS Form 59, if applicable.											
Block 32 - Remarks	Include here: Any additional data. Reason report date is 24 hours older than Warrant date, i.e., "Sealed Indictment." When entering License Plate and/or Vehicle data, two (2) higher standards MUST be met. 1-Location of vehicle and/or license plate MUST be unknown. AND 2- the reporting officer has reasonable grounds to believe the subject is operating the vehicle or a vehicle with the license plate. Note: Mere knowledge or verification through a DMV that a vehicle and/or license plate is registered to the subject does not meet the criteria for entry!											
Block 33 - Clearance Information	Use this block ONLY if the subject has been apprehended. Blocks are self-explanatory.											
Block 34 - Cancellation Information	Use this block to explain any reason why the warrant is no longer valid.											
Block 35 - (b)(7)(E)	(b)(7) Record Identification number											
Block 36 - NIC	National Criminal Information Center (NCIC) number, if known, used for removing an NCIC record.											
Block 37 - OCA	OCA is an NLECC assigned number.											
Block 38 - Primary Apprehension Responsibility	Check one box to signify the agency which has primary apprehension responsibility.											
Block 39 - Reporting Officer	Print name, sign, and date. Include office telephone and cellular numbers.											
Block 40 - Approving Official	Print name, sign, and date.											

DHS Form 59 (10/09)

Enforcement and Removal Operations Escape Reporting Worksheet



U.S. Immigration
and Customs
Enforcement

Within 24 hours send to the Detention Management Division. Fax # (202) 732-5586 or scan and email to (b)(7)(E)					
SIGNIFICANT EVENT NOTIFICATION #:					
TODAY'S DATE:		SPECIAL INTEREST CASE:		☐ Y ☐ N	
ESCAPE DATE/TIME:					
DETAINED AS (CHECK ONE):					
☐ ADMINISTRATIVE ☐ CRIMINAL ☐ MATERIAL WITNESS ☐ _____					
NUMBER OF ESCAPEES:		FIELD OFFICE:			
ESCAPE LOCATION NAME:					
TYPE OF FACILITY:					
ALIEN#:	A	SEX:	☐ M ☐ F	CHECK ONE:	☐ ADULT ☐ JUVENILE
SUBJECT'S NAME:			DOB:		
NATIONALITY:			IMMIGRATION STATUS:		
RESTRAINTS:			RE-ARRESTED? ☐ Y ☐ N		
COMMENTS:(i.e.) DISCIPLINARY ACTION, SIR #, PROSECUTED:					

Appendix 6: NFOP Acronym List

Area of Responsibility
Alternatives to Detention
Board of Immigration Appeals
Cold Case File
Child Protective Services
Detention Operations Coordination Center
ENFORCE Alien Removal Module
Fugitive Alien Removal
Fugitive Case Management System
Fugitive Operations Support Center
Fugitive Operations Team
Field Operations Worksheet
High Intensity Drug Trafficking Area Task Force
Law Enforcement Agency
Law Enforcement Support Center
Legal Permanent Resident
National Crime Information Center
National Fugitive Operations Program
National Firearms and Tactical Training Unit
Resident Agent in Charge
Special Agent in Charge
United States Citizen
Violent Criminal Alien Section

(b)(7)(E)



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Director

SUBJECT: Statement of Policy and Intent Regarding Employee Integrity

I write to remind all employees of the special public trust and confidence that we must all honor as we go about our important business as representatives of U.S. Immigration and Customs Enforcement (ICE). As a federal law enforcement agency entrusted with upholding the Constitution and enforcing the customs and immigration laws of this nation, all ICE employees must exhibit the highest standards of integrity and professionalism in their conduct and interaction with the public.

The professional conduct of employees should demonstrate the qualities of integrity, honesty, and loyalty to the United States, a deep sense of responsibility for the public trust, promptness and courtesy in dealing with and serving the public, and a standard of personal behavior that reflects positively upon, and will be a credit to, all employees of ICE and the United States Government.

All employees, regardless of position or rank, are accountable for their choices and actions. Employees who violate the public trust for personal gain or other personal motives, or who compromise their integrity, undermine how the public views them, their co-workers and, in turn, the entire agency. Failure to demonstrate the highest standard of integrity can also interfere with ICE's ability to further the mission that you faithfully carry out each and every day. Consequently, ICE employees must not engage in any conduct or activities that would discredit them, bring ICE into disrepute, or impair the agency's efficient and effective operation.

This memorandum should also serve as a reminder that ICE employees must abide by applicable ICE policies and other rules that govern their conduct at all times, in the United States or abroad. Regardless of local laws or regulations, employees who are permanently stationed abroad or on official travel abroad must abide by the laws, rules, and regulations of the United States. Any ICE employee on official travel abroad is also subject to any rules set forth by the applicable Chief of Mission.

Ethics rules and related policies governing the conduct of ICE employees are available on our website. The ICE Ethics Office and the Office of Professional Responsibility are always available to answer any questions you may have and provide guidance on ethics and prohibited conduct.

By the authority vested in me as Director of U.S. Immigration and Customs Enforcement, I direct the foregoing policy and intent regarding integrity be communicated to the workforce through the leadership of ICE and implemented forthwith.

Signature  Date 5/24/12

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

1033.1: Employee Code of Conduct

Issue Date: August 7, 2012

Effective Date: August 7, 2012

Superseded: This Directive is the originating and establishing document regarding the U.S. Immigration and Customs Enforcement (ICE) Employee Code of Conduct. This Directive supersedes all previous U.S. Immigration and Naturalization Service or U.S. Customs Service issuances, but does not supersede the authorities or references listed in section 7 of this Directive. Additionally, this Directive supersedes any and all local guidance and procedures that are inconsistent with this Directive.

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** As a law enforcement agency, ICE and all its employees have been given the honor of a special public trust. It is imperative that everyone at ICE respect this special public trust by exercising their power and authority with integrity. This includes building and maintaining the trust and confidence of the nation's citizenry; their support enhances ICE's ability to accomplish its mission. To accomplish this, all ICE employees' professional behavior must be beyond reproach and be a model for all to follow. All ICE employees must clearly understand that they are not only representing themselves, but also their co-workers, ICE, and the Federal Government, and that the highest standards of conduct and ethical behavior are required. The purpose of this Directive is to set forth general standards of conduct for all ICE employees to follow that promote integrity and professionalism, conform to established ethical principles, and further the mission of ICE and the efficiency of the Federal government in a manner that merits the respect of the public we serve.
2. **Policy.** To maintain the highest standards of integrity and professionalism at ICE, all employees, whether on- or off-duty or on official travel, must conduct themselves in a manner that does not adversely reflect on ICE; impede the ability of ICE or DHS to discharge its mission; cause embarrassment to the agency; or cause the public or ICE to question the reliability, judgment, or trustworthiness of its employees. All ICE employees will carry out their duties in a professional and business-like manner and will adhere to this Directive and any other applicable policies, statutes, rules, or regulations that govern conduct at all times, in the United States or abroad, whether or not they appear in this Directive. Employees are accountable for their actions and are subject to appropriate disciplinary action for misconduct when there is a nexus, i.e., connection, between their misconduct (on- or off-duty) and the efficiency of the service. Depending on the circumstances, failure to adhere to this Directive may result in disciplinary, adverse, or other corrective action. This Directive does not prohibit conduct that is protected by federal law.

3. Definitions. None.

4. Responsibilities.

4.1. The Director of ICE is responsible for establishing the Code of Conduct for all ICE employees.

4.2 The ICE Ethics Office is responsible for:

- 1) Advising ICE employees on their ethics obligations.
- 2) Responding to employees' questions concerning potential conflicts between their official responsibilities as government employees and their personal activities or other ethics questions, such as outside employment, fundraising, and giving/receiving gifts.

4.3. Supervisors are responsible for:

- 1) Ensuring that all employees receive and acknowledge receipt of a copy of this Directive within the first pay period of their employment and are made aware of any updates or amendments within one pay period of issuance.
- 2) Providing positive leadership and serving as a role model for their employees by complying with the Directive.
- 3) Treating fellow ICE employees with dignity and respect.
- 4) Communicating to their employees that discrimination, harassment, a hostile work environment, and retaliation will not be condoned or tolerated.
- 5) Taking action promptly to notify the Office of Professional Responsibility (OPR) of known or suspected arrests, criminal activity, or serious misconduct on the part of employees.
- 6) Addressing allegations of less serious misconduct in accordance with ICE policy.

4.4. ICE Employees are responsible for:

- 1) Reviewing and abiding by this Directive.
- 2) Being aware of the consequences of violating this Code of Conduct, applicable statutes, regulations, and rules regarding employee conduct.
- 3) Complying with the Standards of Ethical Conduct for Employees of the Executive Branch (5 Code of Federal Regulations (C.F.R.) Part 2635), and the Federal Criminal Conflict of Interest statutes (18 United States Code §§ 201-209).

- 4) Reporting employee misconduct, including arrests and violations of law, rule, or regulation, in accordance with established policies and procedures.
 - 5) Timely filing of any required public or confidential financial disclosure and completing required ethics training.
 - 6) Seeking advice and guidance as needed from their supervisor concerning their responsibilities under this and other policies governing employee conduct.
 - 7) Completing the ICE Ethics Orientation for new employees within 90 days of starting employment at ICE, and annually completing required Ethics and Prevention of Sexual Harassment training courses.
 - 8) Seeking advice and guidance as needed from the ICE Ethics Office concerning potential conflicts between their official responsibilities as government employees and their personal activities.
5. **Procedures/Requirements.** All ICE employees must abide by the standards of conduct set forth in this Directive. ICE employees must understand that this is not an exhaustive list. The absence of a specific standard of conduct does not mean that the unspecified behavior is permissible or that no corrective action will be taken as a result from unspecified misconduct. Employees must comply with all applicable statutes, rules, policies, and regulations, and must not commit any of the offenses listed in the ICE Table of Offenses and Penalties.

5.1. **Conduct Unbecoming of an ICE Employee.**

Because we are entrusted with enforcing the Constitution and laws of the United States, all employees must scrupulously avoid any conduct that might compromise their integrity or that of their fellow employees or ICE. ICE employees must not engage in any conduct or activities on- or off-duty that would discredit the employee, embarrass or bring ICE into disrepute, interfere with or adversely affect ICE's mission, or impair its efficient and effective operation.

5.2. **Loyalty.**

Public service is a public trust. Each ICE employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.

5.3. **Truthfulness.**

ICE employees must be accurate, complete, and truthful in all official matters. ICE employees must not make any misleading or ambiguous statements about official matters that are designed to deceive or mislead others unless it is necessary in connection with an

official assignment. This includes cooperating with official inquiries and providing complete and accurate information in regard to any issue under investigation.

5.4. Courtesy.

ICE employees must be professional, polite, respectful, considerate, helpful, and patient in all official activities that involve contact with fellow workers or members of the public, even in the face of considerable provocation.

5.5. Professionalism.

As part of ICE's responsibility for maintaining a safe, respectful, and productive work environment, employees must display professionalism in their work at all times. All employees must be treated equally, regardless of age, disability, race, marital status, sex, sexual orientation, color, religion, political beliefs, national origin or descent.

Employees may not harass their co-workers or engage in gender-based or sexual harassment in the workplace. They may not abuse in any way their position towards a person who is dependent upon them, including their subordinates. ICE does not tolerate workplace violence including fighting, threats (verbal, visual, or written), or other disruptive behavior or language.

5.6. Ethical Responsibilities.

To ensure that every citizen can have complete confidence in the integrity of the Federal Government, all employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch found at 5 C.F.R. Part 2635.

5.7. Prohibited Associations and Establishments.

ICE employees may not knowingly and inappropriately interact or associate with any persons or organizations actively connected to or engaged in criminal or unlawful activity unless it is necessary as part of an official assignment. ICE employees may not engage in any inappropriate social, sexual, financial, or business relationship with an informant, former informant, or suspected or known criminal. Employees also may not knowingly employ individuals who do not have lawful immigration status in the United States.

5.8. Use of Alcohol and Drugs.

ICE employees may not use illegal substances and may not use legal substances, including alcohol, in a manner that adversely affects the performance of their duties. Employees must not operate government vehicles under the influence of alcohol or other substances that impair operation of government vehicles.

5.9. Gambling.

ICE employees may not engage in any gambling activity while on duty or on Government-owned or -leased property, including gambling on the internet, having an office pool, or conducting any game with financial stakes.

5.10. Attempted Bribes.

Offers of bribery represent direct attacks on the integrity of ICE. If a bribery overture is made, ICE employees must report such activity immediately to the local OPR office by telephone: 1-877-246-8253, or by email (b)(7)(E) ICE employees may also report such activity to the DHS Office of Inspector General.

5.11. Financial Obligations.

ICE employees are expected to meet all just financial obligations and must not knowingly enter into debts they cannot pay. A "just financial obligation" is one that employees have acknowledged or one where there is a final order requiring payment.

5.12. Proper Use of Government Property.

ICE employees must be good stewards of government property and must conserve, protect, and dispose of such property in accordance with the established procedures. In addition to disciplinary or adverse action, employees may also be responsible for paying for damage to, or loss of, government property in their care. Any lost, damaged, or stolen property (including firearms and badge/credentials) must be reported to the appropriate supervisor as soon as possible.

5.13. Use of Badges, Credentials, Official Identification.

Badges, credentials, and official identification cards must be used only for official purposes.

5.14. Safeguarding and Use of Information, Documents and Records.

Employees will properly handle Government records in accordance with ICE and DHS policies including those governing the handling of Sensitive Personally Identifiable Information, Sensitive Security Information, Classified Information, or For Official Use Only/Sensitive but Unclassified information.

5.15. Standard of Attire.

ICE employees must present a professional and positive image to the public and our colleagues both within and outside of ICE. While on official duty, employees must adhere to any applicable dress code policy where they are stationed.

5.16. Reporting Violations of Laws and Employee Misconduct.

Employees have a responsibility to report allegations of employee misconduct, including any violations of law, rule or regulation, of which they are aware. Employees must promptly report to their supervisor and OPR if they are arrested or charged formally in connection with any violation of a federal, state, or local law. Routine traffic tickets do not need to be reported unless the violation is drug or alcohol related (e.g., DUI charges). Reporting must be done in accordance with existing laws and policies.

5.17. Official Travel.

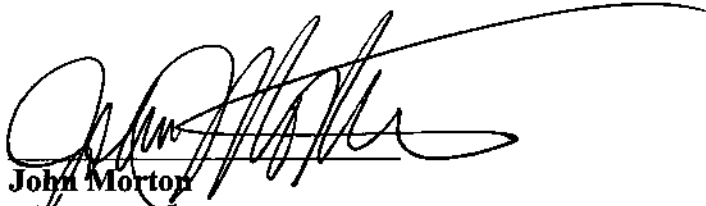
ICE employees must abide by this Code of Conduct and all DHS or ICE policies while stationed abroad or on official travel, even if the prohibited behavior would be permissible under local laws. Any ICE employee on official travel abroad is also subject to any rules set forth by the applicable Chief of Mission.

6. Recordkeeping. None.

7. Authorities/References.

- 7.1.** Sections 402(3) and 402(5) of the Homeland Security Act of 2002.
- 7.2.** 18 U.S.C. §§ 201-209.
- 7.3.** 5 U.S.C. §§ 7321-7326 (The Hatch Act) and implementing regulations at 5 C.F.R. Part 734.
- 7.4.** Stop Trading on Congressional Knowledge Act of 2012 (Stock Act), Public Law No. 112-05.
- 7.5.** 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
- 7.6.** 5 C.F.R. Part 2634, Executive Branch Financial Disclosure, Qualified Trusts and Certificates of Divestiture.
- 7.7.** 5 C.F.R. Part 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations.
- 7.8.** 5 C.F.R. Part 735, Employee Responsibilities and Conduct.
- 7.9.** Department of Homeland Security Management Directive 0480.1, "Ethics/Standards of Conduct."
- 7.10.** ICE Directive 17001.1 (formerly directive 6-1.0), "Functions of the Office of Professional Responsibility."

- 7.11. ICE Directive 1022.1 (formerly directive 1-15.0), "Table of Offenses and Penalties (TOP)."
 - 7.12. ICE Directive 1027.1, "Romantic or Sexual Relationships between ICE Supervisors and their Subordinates (Anti-Fraternization Policy)."
 - 7.13. ICE Directive 1032.1, "Statement of Policy and Intent Regarding Employee Integrity."
 - 7.14. ICE and Customs and Border Protection joint memorandum, signed by the Commissioner of CBP and the Assistant Secretary of ICE dated July 2, 2004, titled, "Guidance on Reporting Employee Misconduct."
 - 7.15. ICE memorandum, signed by ICE Deputy Director Peña dated November 10, 2010, titled, "Directing Complaints Appropriately to the Joint Intake Center (JIC), the Office of Professional Responsibility (OPR), the Office of the Inspector General (OIG), or Local Management."
 - 7.16. ICE Employees' Guide to the Standards of Conduct.
8. **Attachments.** None.
9. **No Private Right.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



John Morton
Director
U.S. Immigration and Customs Enforcement

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

1035.1: ADMINISTRATION AND MANAGEMENT OF EXTERNAL AUDITS

Issue Date: November 23, 2012
Effective Date: November 23, 2012
Superseded: U.S. Immigration and Customs Enforcement (ICE) Audit Liaison Office and Management of Audits Initiated by External Entities Directive, Directive 6-6.0 and all other policy documents about the administration and management of external audits issued by the former U.S. Customs Service or the former Immigration and Naturalization Service. Additionally, this Directive supersedes local guidance and procedures that are inconsistent with the contained policy, guidance, and procedures.

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** The Audit Liaison Office (ALO) provides ICE with oversight and management of all non-investigative audits, inspections, and reviews (collectively audits) by the U.S. Government Accountability Office (GAO), the U.S. Department of Homeland Security (DHS) Office of the Inspector General (OIG), and other external entities. The ALO serves as the single point of contact for all external audits. The ALO supports the development of accurate and timely responses by ICE directorate and program offices, coordinates necessary sensitivity reviews and approval processes, and provides a centralized tracking capability for all audit actions and required documentation. This Directive outlines ICE's process for managing all external audits and defines the roles and responsibilities of key ICE personnel. This Directive applies to all ICE personnel.
2. **Policy.** The ALO serves as ICE's primary point of contact for all major audit events, and all ICE employees are required to cooperate with the ALO to respond to GAO, OIG, and other external entities conducting an audit, inspection, or review. The ALO is responsible for maintaining a record of all information related to an audit that is transmitted to an external entity. To ensure audit functions are appropriately centralized within the ALO, all directorates and program offices must provide the ALO with copies of all requests from and responses to GAO, OIG, and other external entities. Directorates and program offices must also provide the ALO with all information related to an audit, regardless of its type or classification, either before or during its transfer to external entities.
3. **Definitions.** The following definitions apply for purposes of this Directive only:

- 3.1 Announcement.** A written notification from an external entity informing ICE of its intent to conduct an audit.
- 3.2 Audit.** For the purpose of this Directive, the term “audit” will be used as a generic term covering audits, inspections, and reviews.
- 1) *Audit.* An independent administrative examination by GAO, OIG, or other authorized entities (including contract support working on behalf of such entities) of ICE directorates, program offices, activities, functions, processes, or records. Audits are conducted in accordance with the Government Auditing Standards (The Yellow Book) issued by the Comptroller General of the United States.
 - 2) *Inspection.* An independent examination by GAO, OIG, or other authorized entities (including contract support working on behalf of such entities) to determine flaws in the execution of organizational programs, policies, and processes. An inspector relies upon the laws, rulings, regulations, directives, procedures, and processes applicable to an agency or function. An inspector typically questions, compares, and analyzes ICE’s application and interpretation of these elements.
 - 3) *Review.* Typically an independent examination of broad scope for the purpose of gaining greater general understanding of a situation, topic, or process.
- 3.3. Audit Closure.** An audit is closed upon formal request from ICE once the Mission Action Plan (MAP) responses have addressed the recommendations and are implemented. See section 3.12. An audit is not closed simply because a final report is issued.
- 3.4. Audit Coordinator.** The directorate or program office official who, on behalf of the directorate or program office, receives all audit tasks and coordinates the responses for his or her program, which includes, but is not limited to working with other directorates or program offices to produce audit-related information, assigning subject matter experts (SMEs) or designated program officials (DPOs) to draft a response, and providing any other directorate or program office inputs to audit reports.
- 3.5. Component Audit Liaison.** The Component Audit Liaison (CAL) serves as ICE’s primary liaison to the DHS Audit Liaison. For ICE, the CAL is the Audit Liaison Officer.
- 3.6. Corrective Actions.** Measures or actions taken to implement resolved audit findings and recommendations. These measures or actions are outlined and communicated to external entities using a MAP.
- 3.7. Draft Report.** The preliminary presentation of audit findings. This report generally contains an executive summary, a background of the audit, the results of the audit, and the recommendations for executive action. Agencies are typically given 30 calendar days

to comment on GAO and OIG draft reports, barring circumstances, such as Congressional committee meetings, hearings, or calls for testimony.

- 3.8. External Entity.** Any government agency or DHS organizational element not directly assigned under ICE's operational control, but possessing authority or permission to audit ICE (e.g., GAO, OIG, contract support from either of these, and the Internal Revenue Service).
- 3.9. Final Report.** The final presentation of audit findings. The final report contains all of the information included in the draft report in addition to ICE's substantive responses to the draft report. When OIG transmits a final report to the Department's Secretary, it is considered to have been published and released. GAO's final reports are simultaneously published to Congress and to DHS and its components, as appropriate. The external entity usually releases unclassified final reports to the public, as well.
- 3.10. Finding.** The answer to a key question posed by auditors or a deficiency noted by auditors and typically accompanied by recommendations.
- 3.11. Headquarters Responsible Officials.** Executive Associate Directors (EADs) of Homeland Security Investigations (HSI), Enforcement and Removal Operations (ERO) and Management and Administration (M&A); and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, the Chief of Staff, or the EAD for Management and Administration.
- 3.12. MAP.** A tool that management uses to structure its overall plan for remediating a control deficiency that:
- 1) Includes milestones with specific dates and actions needed to correct the deficiency;
 - 2) Provides the means for identifying tasks that need to be accomplished and lists the names of individuals assigned to complete and oversee these tasks, thereby ensuring accountability over results;
 - 3) Serves as a management tool to address and resolve control deficiencies identified within individual DHS processes; and
 - 4) Details the strategies and resources required to accomplish the elements of the plan.
- 3.13. Objectives.** What the audit is intended to accomplish, i.e., key questions about the directorate or program office that the auditors seek to answer based on evidence obtained and assessed against criteria. The auditor will notify ICE of the audit objectives either in its notification letter or during the entrance conference.

- 3.14. ALO Portfolio Manager (PM).** The person who oversees the announcement, entrance, exit, and report phase of the audit, resolves issues with audit teams and ICE employees, and maintains the integrity of the audit data.
- 3.15. Responses.** The component's responses prepared by its SMEs or DPOs that answer auditor requests or provide ICE's comment about an audit report by providing either direct technical responses or formally written substantive responses.
- 1) *Technical responses.* Written explanative technical responses that are developed to properly communicate context or procedures. These include fulfillment of auditor requests for policies and procedures, access to data, site visits, briefings, presentations, demonstrations, interviews, and conducting technical reviews of reports or testimony. Technical responses are an immediate sharing of readily-available technical information, data or materials with the auditors.
 - 2) *Substantive responses.* The ICE Director and delegated leadership officials have the prerogative of providing substantive responses. Substantive responses can be formally written responses to questions posed to ICE as a whole or ICE's comments to an audit report.
- 3.16. Sensitivity Staff Attorney.** A staff attorney from the Office of the Principal Legal Advisor (OPLA) assigned to conduct sensitivity reviews.
- 3.17. Sensitivity Review.** A review to ensure that sensitive or controlled but unclassified information is correctly identified and labeled.
- 3.18. Statement of Facts (SOF).** An outline of the substantive findings that the auditor may provide to ICE prior to or at the time of the exit conference. An SOF typically precedes the audit draft report, but does not contain recommendations and is not a substitute for the draft or final reports.
- 3.19. Status.** The audit agency that makes a recommendation following an audit determines whether the recommendation response addresses the intent of the recommendation and if actions already taken provide adequate corrective action. GAO classifies recommendations in two categories: Implemented or Not Implemented. OIG uses the following categories:
- 1) *Unresolved and Open.* ICE's response does not address the intent of the recommendation (e.g., the MAP does not provide an acceptable alternative solution or ICE identified actions do not correct the underlying issue in the recommendation). As a result, the recommendation status remains "open" and ICE must continue to provide updated responses to the auditor until the recommendation is "resolved and closed."

- 2) *Resolved and Open.* ICE partially addresses the recommendation by providing an acceptable MAP or alternative solution to the issue in the recommendation. However, ICE lacks evidence or justification to close the recommendation. At this stage, ICE must continue to work toward completing the management actions described in the MAP.
- 3) *Resolved and Closed.* ICE fully addresses the recommendation by providing an acceptable solution and evidence to the auditor. ICE demonstrates to the auditors that the MAP solution was implemented.

3.20. SMEs or DPOs. ICE employees who are responsible for or have extensive knowledge about a particular program, subject, or the relevant organization. The Audit Coordinator designates these employees to provide information to the auditor during an audit. The auditor may contact SMEs or DPOs directly in order to obtain information, documents, and schedule interviews during an audit. SMEs or DPOs are assigned for a particular audit only.

3.21. Technical Review. An SME's or DPO's review of an auditor's draft audit report or testimony. The purpose of a technical review is to identify any errors (factual, spelling, grammatical, syntax, contextual, etc.).

3.22. Tracking. The use of business processes and electronic audit tracking systems to monitor correspondence, visits, meetings, compliance, performance, and other administrative actions associated with audits. ICE uses the Performance and Audit Tracking System (PATs).

4. Responsibilities.

4.1. Headquarters Responsible Officials are responsible for:

- 1) Ensuring employee compliance with this Directive;
- 2) Selecting personnel from their immediate staff to serve as audit coordinators and act on their behalf for all directorate or program office audit matters;
- 3) Properly reviewing any documentation to be submitted to auditors;
- 4) Providing copies of all audit-related correspondence and information requests to the ALO; and
- 5) Ensuring that directorate or program office officials provide the ALO copies of responses to each auditor information request in accordance with this Directive.

4.2. The ALO Branch Chief is responsible for:

- 1) Serving as the CAL, or ALO, or designating someone to fulfill that role;
- 2) Referring all investigative matters related to employee misconduct that comes to the ALO's attention to the Office of Professional Responsibility;
- 3) Implementing all aspects of this Directive, including overseeing, administering, managing the performance of, and generally managing all audit-related matters;
- 4) Establishing and maintaining relations with auditors and DHS personnel to aid in coordinating and completing audits;
- 5) If required, meeting with relevant headquarters responsible officials to inform them of the scope of an audit and to develop a strategy to address the audit's objectives;
- 6) Eliminating unnecessary and redundant review processes for records, information, and interviews, consistent with the objective that auditors are given timely access;
- 7) Ensuring that ICE personnel provide external entities timely responses to requests for interviews, documents, formal responses to draft reports and final reports that include MAPs;
- 8) Informing the appropriate headquarters responsible officials of any matters that require immediate attention, including the need to release certain potentially sensitive information;
- 9) Ensuring that all correspondence, official ICE responses, entrance and exit notifications, and draft and final reports are recorded in PATS (hard copies must also be filed, as appropriate);
- 10) Ensuring that the Sensitivity Staff Attorney conducts sensitivity reviews of ICE responses and other information provided to an external entity when necessary;
- 11) Ensuring that official ICE responses to an external entity's audit-related inquiries are properly formatted, grammatically correct, and address the intent of the recommendation or inquiry;
- 12) Reviewing, revising, and submitting all ICE responses to DHS or external entities, including contract support;
- 13) Tracking, monitoring, and reporting the status of all MAPs;
- 14) Informing ICE leadership and relevant headquarters responsible officials that an audit has been closed;
- 15) Providing ICE employees with the required audit-related training;

16) Reporting employee violations of this policy or its authorities to the appropriate management officials; and

17) Delegating these duties, as appropriate.

4.3. The CAL is responsible for:

- 1) Maintaining relations with external audit agencies; and
- 2) Monitoring ICE's activities to ensure that external audit agencies are provided timely and appropriate access to records and employees.

4.4. ALO Portfolio Managers (PMs) are responsible for:

- 1) Coordinating with external entities and audit officials once an audit is initiated to ensure that ICE personnel understand and fulfill all requests on time;
- 2) Coordinating with all relevant audit coordinators and SMEs or DPOs assigned to ongoing audits to ensure that all documentation, including official ICE responses, are provided to external entities on time;
- 3) Managing all aspects of audits, including assigning audit-related tasks to ICE personnel; arranging and conducting meetings and conferences; and keeping accurate records of all meeting attendees, minutes, documents requested, SMEs contacted, and all other correspondence exchanged during the audit process;
- 4) Updating, cataloging and maintaining all relevant information and documents in PATS, including entrance and exit notifications, draft and final reports, correspondence, and official ICE responses;
- 5) Maintaining, tracking, and preserving paper files of documents in accordance with applicable records retention directives and policies;
- 6) Obtaining and distributing responses to audit-related materials, including correspondence, responses, reports, and the SOF;
- 7) Ensuring that official ICE responses to an external entity's audit-related inquiries are properly formatted, grammatically correct, and address the intent of the recommendation or inquiry;
- 8) Tracking the status of each audit recommendation until all ICE concurred recommendations are considered closed by the auditor; and
- 9) Requesting to have a copy of the SOF before the exit conference.

4.5. OPLA is responsible for:

- 1) Serving as ICE's legal counsel and point of contact on legal issues related to external audit-related issues when necessary;
- 2) As necessary, participating in entrance and exit conferences, reviewing audit announcements or initiation memoranda to determine and address substantive legal issues, reviewing the SOF and audit reports for legal sufficiency, drafting responses to recommendations, and coordinating assignments and meetings on audit-related issues; and
- 3) Assigning a staff attorney to the ALO (the Sensitivity Staff Attorney) to conduct ICE sensitivity reviews when necessary.

4.6. The Sensitivity Staff Attorney is responsible for reviewing:

- 1) When necessary, any information responses that have been marked by the directorate or program office as containing sensitive information;
- 2) Any unmarked documents that PMs identify as potentially having sensitive information and ensuring they are properly marked; and
- 3) The SOF, draft reports, and ICE's technical responses to ensure that no sensitive information is released.

4.7. Audit Coordinators are responsible for:

- 1) Providing copies of all audit-related correspondence and information requests to the ALO;
- 2) Designating SMEs or DPOs for all incoming audits;
- 3) Ensuring auditors have appropriate direct access to SMEs or DPOs;
- 4) Ensuring auditors have prompt access to records and interviews;
- 5) Designating all assignments received from the ALO as a priority and completing them on time;
- 6) Coordinating directorate or program office and SME or DPO responses through appropriate directorate or program office leadership;
- 7) Ensuring responses meet the quality standards established in Section 5.5 of this Directive;

- 8) Apprising the ALO regularly of the status of directorate or program office responses;
- 9) Reporting the detailed status of all MAPs initiated as a result of an audit to the ALO;
- 10) Providing copies of all auditors' requests for information and responses to the ALO PMs; and
- 11) Ensuring newly assigned SMEs or DPOs are properly trained on the audit process, procedures, and PATS.

4.8. SMEs or DPOs are responsible for:

- 1) Serving as the principal experts with substantive contextual and technical knowledge of the issues subject to the audit;
- 2) Responding to all audit-related assignments as administrative priorities;
- 3) Making themselves available for audit-related meetings and interviews;
- 4) Ensuring that all audit-related responses that fall within their subject matter expertise are submitted directly to external entities in a timely manner;
- 5) Providing the ALO with copies of all audit-related correspondence;
- 6) Providing their respective Audit Coordinator with copies of all auditors' requests for information and the responses to those requests;
- 7) Informing the ALO of any direct requests for information, interviews, data, or any other materials in a timely manner (if the request is verbal, the SME or DPO should confirm what the auditor is seeking via email and copy the ALO);
- 8) Conducting technical reviews;
- 9) Researching, developing, and writing thorough technical and substantive responses;
- 10) Clearing all official ICE responses for draft and final reports through their respective directorate or program office leadership prior to submitting them to the ALO;
- 11) Independently assessing the contents of any document prepared by an external entity to determine whether it includes any sensitive or controlled but unclassified information and to identify that information to the external entity; and
- 10) Requesting a copy of the SOF before the exit conference.

4.9. Employees are responsible for:

- 1) Responding to all audit-related assignments and information requests as administrative priorities;
- 2) Providing the ALO with copies of all audit-related correspondence and auditor requests for information, data, or materials in a timely manner;
- 3) Making themselves available for audit-related meetings and interviews;
- 4) Notifying the ALO of auditor information requests to ensure that the requests are not redundant or delayed;
- 5) Transmitting all ICE materials and information directly to auditors with a copy sent to the ALO; and
- 6) Complying with the applicable authorities and references cited in this policy concerning allegations of criminal activity, misconduct, fraud, waste, and abuse.

5. Procedures/Requirements.

5.1. Phase 1: Announcement or Notification of Audit. GAO, OIG, or other external entities notify ICE or DHS in writing that they intend to conduct an audit.

5.2. Phase 2: Entrance Conference. The PM arranges an entrance conference for the auditor under his or her purview and obtains as much information in advance regarding the audit scope and information sought.

- 1) The PM notifies the appropriate audit coordinators about the audit and provides them with relevant information.
- 2) Audit coordinators ensure that the appropriate SMEs or DPOs attend the entrance conference and are prepared to actively participate.
- 3) During the entrance conference, the auditors communicate the purpose and scope of the review and seek to obtain a fundamental understanding of the subject of the audit.

5.3. Phase 3: Audit Fieldwork. After the entrance conference, the audit coordinators and PMs coordinate with the appropriate SMEs or DPOs, whether located at headquarters or in the field, to facilitate auditor interviews of ICE personnel, expedite access to systems, and streamline information flow.

- 1) Auditor Support. Directorates or program offices will provide administrative and information technology support to auditors, as requested, including access to copiers, fax machines, telephones, cubicle space, and office supplies.

- 2) Information Requests. The auditor will request information either through the PM or directly from an ICE employee, SME, or DPO.
 - a) Frequently, information requests are made during telephone conversations or by email. If the request is verbal, the SME or DPO should confirm what the auditor is seeking via email and copy the ALO.
 - b) Requests may be redundant at times because auditors may ask multiple ICE employees for identical information.
 - c) ICE personnel must forward all responses to auditor information requests directly to the auditor, with a copy to the PM and the ALO.
- 3) Sensitivity Review. The SMEs are the primary level of protection from inappropriate disclosure of both “classified” and sensitive or controlled but unclassified information to the public.
 - a) Because the SMEs are most familiar with the context and importance of specific information, they are the most qualified individuals to make a sound judgment on the sensitivity of the information.
 - b) SMEs need to ensure that “sensitive” or “classified” information is properly identified (marked) to prevent an auditor’s unintentionally disclosing classified information to the public.
 - c) As an additional level of precaution, PMs must review information that is provided to the auditors. If the PMs are concerned that sensitive information is not properly marked, they will forward the documents to the Sensitivity Staff Attorney for review and copy the ALO.
 - d) Copies of all information provided to auditors during the course of an audit must also be provided to the ALO.

5.4. Phase 4: Exit Conference. Once the audit fieldwork is complete, the auditor holds an exit conference to review and discuss findings. The exit conference is the last opportunity for each directorate or program office official to interact and collaborate with the auditors. Each PM must assist the auditors in scheduling the exit conference and ensure that ICE is properly represented at the conference.

- 1) Prior to or at the time of the exit conference, the auditor may provide ICE with an SOF that presents the audit findings.
- 2) If the SOF is presented in advance, appropriate ICE officials must review the statement and prepare clear and concise technical and substantive comments that the

auditor can incorporate into the draft report. PMs are responsible for assigning all designated SMEs, DPOs, or other officials, as they deem appropriate, to review the SOF.

5.5. Phase 5: Draft Report. Once the auditors have collected sufficient information, they compile findings and recommendations into a draft report. The PM distributes the draft report and tasks the appropriate personnel to review the report and develop response(s). ICE responds to auditor requests by providing either direct technical responses or formally written substantive responses. ICE's SMEs or DPOs prepare these responses.

1) Standards for Reviews and Responses.

- a) Technical Reviews. ICE provides supporting material only to correct errors or to demonstrate an important concept or context. The response does not require a substantive response bearing the Director's signature, but it must be transmitted through the ALO.
 - b) Technical Responses. ICE fulfills the auditor's requests for policies and procedures, access to data, site visits, briefings, presentations, demonstrations, and interviews. The SME or DPO may also conduct technical reviews of reports or testimonies. SMEs or DPOs must develop written technical responses that properly communicate the context or procedures addressed in the inquiry. They must research the responses, support them by documentation whenever possible, develop them fully, and write them well. Programs will submit the technical responses and supporting materials to the ALO for ICE leadership to review and transmit.
 - c) Substantive Responses. ICE leadership responds to questions that are posed to ICE as a whole, or those for which the auditor requires managerial perspective or context. The Director and delegated leadership officials have the prerogative to provide substantive responses. These responses must be researched, fully developed, written in the correct format, accurate, and complete. New substantive responses to auditors must be submitted to the ALO and approved by the appropriate leadership official.
- 2) Executive (Leadership) Review. Headquarters Responsible Officials must review and approve substantive responses submitted for the Director's review and signature before submitting them to the ALO.

5.6. Phase 6: Final Report. The auditor publishes its final report with ICE's response to the draft report included in the appendices.

- 1) The auditor may close some or all of the recommendations if ICE's official response to the draft report provides sufficient evidence to resolve the findings highlighted in the draft recommendations.

- 2) The auditor will indicate whether or not a recommendation has been closed in the final report by stating the recommendation's status.
- 3) The corrective action phase starts if there are recommendations pending resolution subsequent to the final report.

5.7. Phase 7: Corrective Action. Following the publication of the final report, ICE must take corrective management actions to resolve the previously concurred audit recommendations. All actions must be completed in accordance with the standards, timeframes, and instructions established by the Office of Management and Budget, DHS, and ICE. ICE must develop and submit a MAP for any recommendation(s) with the status of "open."

- 1) If a recommendation is open, each affected directorate or program office must provide a MAP to the ALO within 45 days of the publication or release of the final report.
- 2) The ALO must ensure that the response to the final report, including a MAP, is properly reviewed and vetted through ICE leadership within the allotted timeframe. GAO requires the MAP within 60 days of a final report's release date. OIG requires the MAP within 90 days of the final report's release date.
- 3) Each affected directorate or program office must regularly provide an updated MAP to the ALO until the corrective action is complete. Updated MAPs are provided to GAO every 6 months and to OIG every 90 days.
- 4) For both GAO and OIG audits, ICE must make every effort to resolve each recommendation and implement corrective action in full within 1 year of the final report's release date.

5.8. Phase 8: Audit Closure. After the MAP responses address the audit final report recommendations and are implemented to the satisfaction of the auditors, ICE must formally request that an audit be closed. An audit is not closed simply because a final report is issued.

6. Recordkeeping. All correspondence, official ICE responses, entrance and exit notifications, draft and final reports, and any other records generated as a result of this Directive will be stored and maintained in PATS, an electronic tracking system that the ALO oversees and manages.

7. Authorities/References.

- 7.1. Legislative Reorganization Act of 1970, Section 236, Public Law (Pub. L). No. 91-510.
- 7.2. General Accounting Office Act of 1980, Pub. L. No.96-226.
- 7.3. Inspector General Act Amendments of 1988, Pub. L. No.100-504.
- 7.4. Homeland Security Act of 2002, Title 6, United States Code (U.S.C.).
- 7.5. The Department of Homeland Security (DHS) Financial Accountability Act of 2004, Pub. L. 108-330.
- 7.6. Inspector General Act of 1978, 5 U.S.C. Appendix 3.
- 7.7. 31 U.S.C. §§ 701-720.
- 7.8. 31 U.S.C. § 3529.
- 7.9. Office of Management and Budget (OMB) Circular A-11, Part 1, Section 22, Communications with Congress and the Public and Clearance Requirements (2011).
- 7.10. OMB Circular A-50, Revised, Audit Follow-up (Sept. 29, 1982).
- 7.11. DHS Management Directive (MD) 0810.1, The Office of Inspector General.
- 7.12. DHS Directive 077-02, Revision 01, "Relations with the U.S. Government Accountability Office" (June 8, 2010).
- 7.13. DHS Instruction 077-02-001, Revision 01, "Relations with the U.S. Government Accountability Office" (July 2, 2010).
- 7.14. DHS Directive 077-01, Revision 00, "Follow-up and Resolution for Office of Inspector General Report Recommendations" (Oct. 7, 2010).
- 7.15. DHS Instruction 077-01-001, "Instruction on Follow-up and Resolution for Office of Inspector General Report Recommendations" (Jan. 31, 2011).

8. Attachments. None.

9. **No Private Right.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

A handwritten signature in black ink, appearing to read 'John Morton', is written over a horizontal line.

John Morton
Director

U.S. Immigration and Customs Enforcement

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U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All Field Office Directors AUG 25 2006

FROM: John P. Torres, Acting Director
Office of Detention and Removal

A handwritten signature in dark ink, appearing to read "John P. Torres".

SUBJECT: Confiscation and Return of Original Documents

This memorandum supersedes the memorandum dated July 14, 2006, due to revisions regarding the following subsection: Aliens Under Orders of Supervision.

Upon initiation of removal proceedings against any alien, including Lawful Permanent Residents (LPRs), the Office of Detention and Removal (DRO) will generally confiscate any foreign and domestic government issued documents either in the alien's possession or submitted to DRO by the alien. Such documents may include, without limitation, passports, driver's licenses, social security cards, alien registration cards (I-551), birth certificates, foreign identification cards, school records, etc. DRO will generally retain all confiscated documents of aliens in removal proceedings, as well as aliens with final orders of removal that have been released from DRO custody. Additionally, confiscated documents of detained aliens will be retained by DRO.

Upon release of the alien from detention, DRO officers frequently face questions from aliens and their attorneys regarding return of such documents. The decision to retain or return any particular document will be made on a case-by-case basis, and be based on ICE operational and evidentiary needs. Pursuant to the procedures outlined below, DRO officers, in consultation with other ICE offices, as necessary, will review the validity of an alien's request, assess ICE's operational need for the document, and render a final decision.

In determining whether to return a particular document, the officer should assess whether the alien is legally entitled to possess the document, whether the alien has expressed a legitimate need for the document, and whether ICE has an operational need to retain the document. If a question exists whether an alien is lawfully entitled to a particular government document under state or federal law, the officer should refer the matter to a supervisor or the local Office of Chief Counsel. In general, DRO officers should apply the following guidelines:

- If the alien is not legally entitled to possess the document, and ICE has no operational need to retain the document, then the document should be returned to the government agency that issued the document;
- If the alien can legally possess the document, and ICE has no operational need to retain the document, then the document should be returned to the alien;

If the alien can legally possess the document, but ICE has identified an operational need to retain the document, then the document may be retained. If the officer determines that

the document will be retained, such retention should be based upon a clearly articulated operational need. In making this determination, the officer should assess the alien's stated need for the document and whether release of the document will compromise ICE operations, particularly ICE's future ability to execute a removal order against the alien.

ILLEGAL ALIENS AND NON-LPRs. DRO officers may retain domestically issued government documents of illegal aliens and other non-LPRs at the officer's discretion. Such documents may include state issued identification cards, driver's licenses, social security cards, or similar documents. DRO has a clear need to retain such documents as unlawful possession of such documents gives illegal aliens and other aliens not legally entitled to the possession of such documents the appearance of legitimacy, and aids them in their efforts to escape detection.

LAWFUL PERMANENT RESIDENT ALIENS. LPRs are entitled to evidence of permanent status while going through removal proceedings. If a DRO officer confiscates a permanent I-551 due to pending proceedings, upon the alien's release from detention, ICE should issue a temporary I-551 card to the alien as evidence of LPR status. If the temporary I-551 card expires during removal proceedings, the DRO office with jurisdiction over the alien shall renew and/or re-extend the card as required. Upon entry of an administratively final order of removal, an LPR's status terminates and the temporary I-551 should be confiscated. If relief is granted or proceedings are terminated, the permanent I-551 card shall be returned to the LPR and/or exchanged for the temporary I-551 that was temporarily issued.

In most cases, non-detained LPRs in removal proceedings are legally entitled to basic forms of identification such as driver's licenses and social security cards until an administratively final order of removal is entered against them. Therefore, if an LPR who is not in custody requests the return of a government issued document and can show a legitimate need for it, the DRO officer should only retain the document where a clear operational need would be jeopardized by the document's release.

COPIES AND ALIEN ACKNOWLEDGMENT. Copies of any documents returned to any alien should be placed in the alien's file and must be accompanied by a form or notation by the alien acknowledging receipt/return of the document. Additionally, copies of original documents retained by DRO may be provided to the alien upon assessment of the alien's expressed need, unless there is an operational concern to restrict access.

CRIMINAL PROSECUTIONS. For cases being presented to the U.S. Attorney's Office for prosecution, ICE will retain all confiscated government issued documents. LPRs whose permanent I-551s are confiscated should be issued temporary I-551s as outlined previously.

ALIENS UNDER ORDERS OF SUPERVISION. Generally, ICE will retain all foreign issued documents, including, but not limited to, passports, identity cards, and birth certificates of aliens under a final order of removal, as these are needed to obtain a valid travel document for the alien in order to effectuate removal. The retention and/or return of such documents will be reviewed on a case-by-case basis. As to U.S. issued documents, their return shall be weighed against DRO's operational needs and the alien's expressed need for the document.

REQUESTS BY FOREIGN GOVERNMENTS. When an administratively final order of removal has been issued and is in effect, ICE officials generally prepare and submit a request for a travel document to the alien's embassy and/or consular office. Such requests include copies of documents that may verify an individual's identity, citizenship and/or nationality. ICE will retain the originals of the government issued documents submitted to the embassy and/or consular office. However, if foreign and/or domestic officials submit written inquiries requesting the return of the original document(s), ICE may surrender the document(s) and place copies in the A-file after conferring with legal counsel.

FRAUDULENT DOCUMENTS. Foreign and domestic government documents (i.e. passports, social security cards, driver's licenses, etc.) that are counterfeit or were obtained fraudulently will be confiscated and retained by ICE officials in all instances. Only authentic documents will be considered for return.

U.S. Department of Homeland Security
425i I Street, NW
Washington, DC 20536



U.S. Immigration and Customs Enforcement

APR 08 2008

MEMORANDUM FOR Assistant Directors
Deputy Assistant Directors
Field Office Directors
Deputy Field Office Directors

FROM: Gary Mead
Acting Director

A handwritten signature in black ink, appearing to be "Gary Mead".

SUBJECT: Immigration Bond Policies and Procedures

Purpose

This memorandum establishes the Immigration bond policies and procedures for all field offices.

Authorities/References

Immigration and Nationality Act
Title 8 Code of Federal Regulations
Immigration Bond, form I-352
Department of Treasury Circular 570
Field Financial Procedures (Burlington Finance Center)

Superseded/cancelled policy/Summary of Changes

This memorandum supersedes all previous INS and DFIS bond policies and procedures with the exception of those memoranda referenced herein.

Background

DRO bond management administration has undergone substantial progress since 2006. As a result, the need for updated DRO bond policies and procedures is vital to continue to achieve bond management excellence. This memorandum provides important updated bond policies, procedures and information.

Discussion

I. Immigration Bond Defined

An immigration bond is a financial agreement between the obligor and the alien in which the Department of Homeland Security is the beneficiary.

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2. Introduction to Bonds

The primary regulation that authorizes immigration bonds is Title 8 CFR §103.6 which provides authority for the Field Office Director (FOD) to release an alien under the conditions of an Immigration bond.

A bond is a legally binding guaranty by an individual or company (the obligor) in which the obligor commits a certain sum of money to guarantee an alien's compliance with the bond conditions. The form used to execute immigration bond agreement of all types is the Immigration Bond, form 1-352.

If the specified conditions are fully met, the bond is cancelled and any securities or monies deposited are returned, with interest, to the obligor. If no securities have been exchanged, as is the case with cash and surety bonds, then the surety company is released from its obligation to the Government (8 CFR §103.6(c)). If the conditions are not fulfilled, the bond is declared breached and the financial deposit forfeited or the liquidated damages recovered by the government (8 CFR §103.6(e)).

The bonds posted with Detention and Removal Operations (DRO) and discussed in this chapter are, specifically, "immigration bonds." Although delivery bonds comprise the largest group in both numbers and dollars, immigration bonds serve other purposes, also, e.g., setting conditions on an alien's release, enforcing an alien's timely departure, ensuring an alien maintains a valid immigration status and does not violate the conditions under which he/she entered the United States, etc. Through knowledge and applicability of immigration bond programs and eligibility for release in compliance with 8 CFR §1236.1, FODs must ensure that appropriate actions are taken to protect the interests of the United States and the Department of Homeland Security, Immigration and Customs Enforcement.

3. Bond Types

General - Immigration bonds fall into the two categories. Appearance Bonds, which include Delivery and Order of Supervision Bonds, and Performance Bonds, which include Voluntary Departure, Public Charge, Maintenance of Status and Delivery, and Inadmissibility Bonds.

- a) Appearance Bonds - This type of bond secures the release of an alien in custody to the obligor in return for the obligor's undertaking to produce or cause the alien to be produced to an immigration officer or an immigration judge of the United States as specified in the appearance notice upon each and every written request until the proceedings are finally terminated. An alien may be required to appear for immigration proceedings, interviews, for any reason deemed necessary by the Field Office Director (FOD), or to be removed from the United States pursuant to an Order of Removal by a court. A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States, which may not be released or discharged by a field office. This category includes the following:

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- Delivery Bond — This is posted for aliens in administrative immigration proceedings. The bond is breached when the obligor fails to "deliver" the alien as agreed, and has failed to comply with the Notice to Deliver Alien, Form 1-340 (details in §12.10 below). Cancellation of the bond is when the obligor is in compliance with the bond agreement, which includes, delivering the alien, alien's death, proceedings are terminated, the bond is cancelled, or the U.S. Immigration and Customs Enforcement (ICE) accepts the alien into custody for detention or removal, etc. (8 CFR §212.5(d)(1)) (details in §12.11). Pursuant to the INA §236(a) (2) (A) the minimum bond is \$1,500.00.
 - Order of Supervision Bond (OSUP) — If an alien is determined eligible for release after a final order of removal has been issued and has met the regulatory requirements, pursuant to 8 CFR 241.5(a) "*Order of Supervision*, (b) *Posting of bond*. An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal."
 - The obligor guarantees the alien's compliance with all requirements (cooperating with efforts to obtain travel documents, surrendering for removal, etc.). Given the number of conditions that may be attached to bonds of this type, you must exercise judgment in deciding whether the violation of a particular condition constitutes a substantial violation resulting in a breach event (see below). Ensure the alien and obligor understand that a violation of the Order of Supervision conditions, or fails to appear pursuant to a demand Notice to Obligor to Deliver Alien, Form 1-340, can result in a breach of the bond. As a general rule, if you find "substantial performance" (compliance with the terms of the Order of Supervision), you should let the bond stand.
 - NOTE: There is no conversion of a delivery bond into an OSUP bond. A deliver bond must be cancelled and an OSUP Bond must be posted in lieu of the delivery bond or the delivery bond may be left in place and an OSUP bond may be posted. Ensure the 1-352 form in section "C" contain the following: "Bond conditioned upon completion with an alien's Order of Supervision, form I-220B (attached)."
 - An explanation as to the responsibilities associated with posting OSUP bond must be explained to the obligor and a copy of the signed OSUP attached to the obligor and ICE's copies of the bond form. Update the appropriate DRO databases.
- b) Performance Bond - Bonds of this type oblige the alien to meet the standard conditions imposed by his/her immigration status (e.g., a B-2 visa holder cannot work in the United States) or case-specific requirements. Performance bonds are:
- Voluntary Departure (VD) Bonds - These bonds commit the alien to arrange, finance, and affect his/her departure from the United States by a specified date, in accordance with the conditions specified in the voluntary departure order. Voluntary departure expires on or before the date issued by the court or by the Agency and cannot exceed 120days(8CFR240.25(c)).

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- Public Charge Bond — This bond is posted to ensure an alien's ability to support him/her without depending on public assistance from any federal, state, or local agency. With enforceable affidavits of support required for family-based immigration since December 1997, the need for public charge bonds has declined. For clarification of the public benefits excluded from public charge determinations, see INS No 1988-1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds dating from May 1999 (<http://www.acf.dhhs.gov/programs/ofa/fieldgui.htm>) (8 CFR 213.1). This bond is generally under the purview of Citizenship and Immigration Services (CIS), and Customs and Border Protection (CBP) Pursuant to 8 CFR § 213.1, the minimum bond is \$1,000.
- Maintenance of Status and Departure Bonds — This can be required by a consulate before issuing a nonimmigrant visa, by Inspections prior to admission, by an immigration judge (IJ) prior to admission, or by an adjudicator before granting an extension of stay or change of status; rarely used. This bond is generally under the purview of Customs and Border Protection (CBP) (8 CFR 103.6(c) (2)).
- Inadmissibility Bond — This type of bond is posted to parole certain inadmissible arriving aliens; previously called "exclusion bonds." These bonds are primarily accepted by Customs and Border Protection (CBP) (8 CFR §212.5(d) (1)).

4. Bond Posting Instructions

- a) Bond-Posting - Any person (including the arrested alien, illegal aliens in proceedings, corporation, or surety company) may post an immigration bond. Individuals and corporations post cash bonds. Surety insurance companies (and their agents) post surety bonds. (Ref: Bond Posting Hours and Release Policies and Procedures, December 18, 2006)
- b) Bond Posting Hours -All DRO offices that accept the posting of cash or surety bonds are to service the public between the hours of 9:00 a.m. to 3:00 p.m. local time.
- c) Alien Verification- The field office accepting the bond and field office releasing the alien, must identify the alien via name, alien registration, FBI number, date of birth, country of citizenship, etc. It is imperative that the alien identification is verified in order to avoid an inadvertent release of any alien from DRO custody.
- d) Verify the bond amount - Bond amounts must be based on articulable facts and have a nexus between the alien's compliance with the factors addressed in 8 CFR §236.1(c); 8 CFR §241.3; 8 CFR §241.5, or as set by the Immigration court or Federal Court.
- e) Arrange for alien's release - Prior to posting a bond, the FOD or his/her designee must confirm that arrangements have been made to ensure the alien's

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timely and safe release. If the alien cannot be released upon the posting of the bond due to technical reasons, then the alien's release should occur as soon as possible thereafter. The release of the alien should be coordinated with all parties involved, the detention facility, the field office(s), the obligor and the alien.

- f) Verify alien's release - Immediately upon posting of the bond, the field office accepting the bond must ensure the alien is timely released from custody.

5. Cash Bond Posting Procedures

- a) Cash Bonds Defined - The individual or corporation must post the full amount of the bond in cash or cash equivalent, in the form of cash (U.S. dollars only); cashier's check; certified check; or money order. Checks and money orders must be made payable to the "Department of Homeland Security" or "Immigration and Customs Enforcement". For security reasons, variations or abbreviations i.e. DHS or ICE are not acceptable. Field Office Directors have the discretion to determine which form of payments is acceptable. In order to accept cash, the FOD must ensure adequate physical security standards are maintained. (Ref: INS Fee Collection Procedures)
- b) Request identification from the obligor - The obligor may present any U.S. government- issued photo identification including, but not limited to, passport, military ID, resident-alien card, driver's license. Be sensitive to the fact that the obligor may be a U.S. citizen. ICE will accept any government issued photo identification presented by the obligor. (*Most states now require legal status in the United States to obtain a Drivers License.*) If the authenticity of the photo-ID presented by the obligor is questionable, consult your supervisor. (See Director's memorandum entitled *Confiscation and Return of Original Documents*, dated July 14,2006)

Note: Officers, Special Agents and Immigration Enforcement Agents have the legal authority to question or determine alienage under the INA. The Office of Principal Legal Advisor (OPLA) has established that pursuant to current regulations and authority, Bond Control Specialists, Deportation Assistants and Clerks can sign receipts (Form 1-305); however, other official documentation must be signed by authorized Officers, Special Agents and Immigration Enforcement Agents.

All identification presented by the obligor must be photocopied and attached to the bond documents and placed in the A-file.

- c) Status of obligor - Aliens posting bonds must either be lawful permanent residents (LPR), alien placed in removal/exclusion proceedings, or be a final order alien on an Order of Supervision. When an alien with no legal status in the United States appears to post a bond, he/she should be placed in removal proceedings. Once served with their Notice to Appear, Form 1-862, he/she may post the bond. An alien, subject to a

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Final Order of Removal who appears to post a bond must be taken into custody and have custody status determined by the Field Office Director. If released, the alien must be issued an Order of Supervision with /or without an Order of Supervision Bond.

- d) Social Security and Tax Identification Numbers (SSN and TIN) - A bond cannot be denied or refused if an obligor does not produce a social security or tax identification number. Note: The Office of Principal Legal Advisor (OPLA) has determined that the requirement to present valid social security numbers or tax identification numbers pursuant to 31 USC §770 l(d) applies to cash bonds and surety bonds. If the obligor or surety does not provide a TIN/SSN, they are subject to backup withholding of the interest payments. Government payments to a foreign address are an automatic 30% withholding on the interest payment.
- e) Eligibility for release - The Field Office Director (FOD) is ultimately responsible for the release of an alien in the custody of Immigration and Customs Enforcement (ICE). Therefore, it is every employee's responsibility to ensure that the release of an alien on bond is in compliance with the Immigration and Nationality Act and regulations and that all documentary evidence requirements have been met. Review the alien's identity and file to verify custody status and eligibility for release on bond. Ensure that the Field Office Director or his/her designee has authorized the release of the alien. When an alien is in the custody or detained by a law enforcement agency other than ICE, no immigration bond may be posted.
- f) Quality control - When you have completed the above verifications, you may ask a Detention and Removal Assistant (DRA) to prepare the bond forms. Although quality control is everyone's responsibility, ultimately it is the Deportation Officer, Immigration Enforcement Agent or the Bond Control Specialist's responsibility to ensure completeness and accuracy of the bond forms before the bond is posted. It is recommended that the Deportation Officer, Immigration Enforcement Agent or Bond Specialist initial the documents before the bond be posted.
- g) Bond log - Obtain the bond number from the cash bond logbook and enter it in the space provided for "Bond Receipt No." at the top right-hand corner of the immigration bond contract, Form 1-352.

Enter into the cash bond logbook immediately after the bond receipt number: the alien's name and address; the obligor's name and address; the sum deposited, and the current date.

- h) Prepare the 1-352 - Have the obligor sign where indicated (boxes "D" and "I"). With an ICE employee witnessing the transaction, complete section "J".

By completing box "E," the Field Office Director approves the transaction.

Prepare receipt for U.S. Bonds or Notes, or Cash, Accepted as Security on Immigration Bonds, form 1-305, recording the cash or securities deposited with the Department

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(DHS) to guarantee the bond. It is recommended that all cash transactions be witnessed by a DHS employee (Ref: INS Fee Collection Procedures).

Give a copy of Form 1-352, the original 1-305 to the obligor, and any bond riders (additional conditions) agreed to by the obligor (Ref: 8 CFR §103.6(a) (2)). If the alien is detained locally, place the original 1-352 and a copy of the 1-305 in the alien's administrative file. Forward copies of both documents to the Burlington Financial Center, (BFC) with the deposit ticket, Form SF-512 and the schedule of collections, Form G-254.

- i) Document transmittal - If the alien is detained elsewhere, send the originals to the File Control Office (FCO) via overnight delivery. Send the BFC a Notice-Bond Location Transfer, form 1-350, for notification of a change of the File Control Office (FCO).

Upon bond posting completion, ensure that a Deportation Officer or Immigration Enforcement Agent is notified. Ensure the appropriate FCO or detention facility receives the appropriate documents in order to release the alien.

- j) Verification of alien's release - Upon execution of the immigration bond, the field office accepting the bond must ensure that the alien is released in a location that is safe and where public transportation is available. The alien should be release without delay, but not released during late night hours and/or in a location that is unsafe.
- k) Database updates - Update the Deportable Alien Control System (DACS), EARM, and EADM. On the BOND screen, enter the amount deposited (BOND-AMT-POSTED); the type of bond ("C" for cash or "S" for surety), the bond number (BOND-NUM), and the post date (DATE-BOND-POST), along with the obligor's name and address (OBLIGOR). On the BIOS screen, enter the alien's new address. Note other details on the Case Comments (CCOM) screen. Update the CRIM screen with all criminal charges and convictions. Within DACS, the CCOM should clearly reflect the type of bond posted, additional requirements placed upon the alien, if any.
- l) Stamp - "BOND POSTED" on the front of the A- file jacket, along with the posting date.

See *Bonds Field Financial Procedures*, section 1 (<http://ofm.ins/static/pdf/bonds.pdf>); see also *DACS User Manual*, sections 4.3.4 and 4.3.5 (Appendix 36-1. below).

6. Surety Bond Procedures

- a) Surety Bonds - The surety company or agent on their behalf must provide a power of attorney (the legal instrument authorizing the agent to execute the immigration bond on the surety company's behalf, and to obligate money equal to at least the amount of the bond.) If the power of attorney specifies a monetary limit, e.g. \$5,000, the agent can post bond up to the specified amount only. The agent may not combine two or more

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powers of attorney to post a bond. No cash, check, or other collateral is required at the time the bond is posted.

The power of attorney must specifically authorize the posting of an immigration bond; otherwise the surety company may dispute the agent's authority to act on its behalf.

Treasury Department Circular 570 lists all surety companies approved to post bonds with the U.S. Government. Copies are available in all ICE offices and on the Internet, at a (b)(7)(E)

Surety companies assume financial responsibility and risk as obligors, to ensure delivery of the bonded alien. A Surety Company (or the company), agency or the bonding agents working on the company's behalf, shall deliver an alien as required. An alien taken into custody by an agency or agents working for or on behalf of a surety company shall ensure the safety, health and welfare of the alien, and assumes such responsibility until that alien is properly turned over to DRO.

The surety company or agent on their behalf may prepare the form 1-352; although this may expedite the bond posting it is not recommended for security and liability purposes. However, if it is allowed, a Deportation Officer, Immigration Enforcement Agent, or a Bond Control Specialist must review and initial these forms for completeness and accuracy before accepting the bond on behalf of the Department of Homeland Security.

To do so, follow the same procedures indicated above for Cash Bonds, except as indicated below:

- b) Power of Attorney - Verify the validity of the power of attorney provided by the surety agent by checking the maximum amount and the expiration date before attaching it to the bond contract. Remember that the power of attorney must specifically authorize the agent to post an immigration bond. The name on the Power of Attorney must correspond to the agent's name on the 1-352.
- c) Surety Bond Logbook - Obtain the bond number from the surety bond logbook, and enter it in the space provided for "Bond Receipt No." at the top right-hand corner of the 1-352. Check that "-S-" (for surety) appears between the location code and logbook number, e.g., ELP-S-3456. (ELP is the three code (FCO) for El Paso.) Cash bond numbers have no middle component, so are shorter. (Note, however, both "-C-" and "-S-" appear in BFC's bond-numbering system, e.g., ELP-S-3456; ELP-C-5498).

Enter into the surety bond logbook, immediately after the bond receipt number: the alien's name, number, and address; the obligor's name and address; the bond amount; and the current date.

- d) Bond form Completion - Have the surety agent complete boxes "D" and "F" on the I-352. After providing the date where indicated, he/she must sign box "D" twice: as

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obligor (exercising power of attorney) as well as agent. Likewise, completing box "F" will require the agent to answer for the surety company and for him/herself, providing both tax ID numbers, as required.

Provide the agent with two copies of the 1-352: one to retain, the other to file with the surety company underwriting the bond. If the alien is detained locally, place the original 1-352 and power of attorney in the alien's administrative file. Forward copies to the BFC.

- e) Release of Alien - Upon bond posting completion, ensure that a Deportation Officer or Immigration Enforcement Agent is notified that the bond process has been completed and the release notification will be forwarded to the appropriate detention facility or personnel to release the alien.
- f) Update PRO Databases - As indicated above.

See *Bonds Field Financial Procedures* (b)(7)(E) see also *DACS User Manual*, sections 4.3.4 and 4.3.5 (Appendix 36-1. below).

- g) Release of Obligation - The obligor must comply with the terms and conditions contained within the version of the Immigration Bond, form 1-352 on record (Ref: Declarations of Breach memorandum 04/06/05.).
- h) Breach of Immigration Bond - If the obligor fails to comply with the terms and conditions contained within the version of the Immigration Bond, form 1-352 on record the bond shall be immediately breached as of the date of the breach event. (Ref: Declarations of Breach memorandum 04/06/05.).

7. Bond Processes

- a) Bond Determination Defined - Title 8 CFR § 1003.19 explains the custody and bond determinations made by ICE may be reviewed by an Immigration Judge pursuant to 8 CFR §1236.
- b) Notice of Custody Determination. Form 1-286. is used to advise the alien of the custody determination, bond amount for release, and the right to a custody/bond re-determination. Each alien who is placed in a removal or an inadmissibility proceeding is to be issued this form. This form is used to begin any pre-final order bond processing. Provide a copy of this form to the alien and the original is to be filed in the A- file.
- c) Bond Amount. Bond amounts must be articulable and have a nexus between the alien's compliance with the factors addressed in 8 CFR §1236.1(c); §1241.3; §1241.5, or as set by the Immigration Court, or Federal court.

8. Bond Re-determination

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General - At any time during removal proceedings, the alien may request a bond re-determination from the Field Office Director. If dissatisfied with the Field Office Director's, the alien may request a custody re-determination before an immigration judge and if dissatisfied with the immigration judge's decision, the alien may file an appeal with the Board of Immigration Appeals (BIA). Upon exhausting all administrative avenues an alien may appeal his custody/bond determination with the use of a Writ of Habeas Corpus to the federal court or federal appeals court with jurisdiction over the case. (8 CFR §1003.19; §1236.1)

- a) ICE Appeal - Through the Chief Counsel or the United States Attorney, ICE may also appeal the immigration judge's bond decision to the BIA or through the federal courts.
- b) Release Pending Bond Re-determination - Although re-determination hearings take place quite promptly, some aliens/obligors prefer not to wait. In such cases, at the Field Office Director's discretion, the alien may be released pending bond re-determination if the full amount of the bond being requested to be reduced, is posted. (It is recommended that release of the alien not occur if a re-determination hearing is imminent)

Processing a Bond after Re-determination.

- a) Alien is not in custody - a Notice to Obligor to Deliver Alien, Form 1-340, must be sent to have the alien appear for custody re-determination.
- b) Surety bond - must be cancelled if the amount is different. The surety company must post a new bond in the revised amount with a new power of attorney.
- c) Cash bond - amounts can be increased or decreased without necessarily canceling the bond and re-issuing, see *Bonds Field Financial Procedures*, sections 8 and 9 (<http://ofm.ins/static/pdf/bonds.pdf>).
- d) PRO Database Updates - Record any re-determination of the bond amount in the DACS BOND screen. Enter the date (BOND-RED-DATE) and the new amount set by the FOD, Officer in Charge, IJ, or BIA. Update, BIOS in EARM/EADM with any updated information and CCOM with who re-determined bond amount.

9. Bond Miscellaneous

- a) Voluntary Departure (VD) Bonds - If the immigration judge (IJ) granting voluntary departure requires the posting of a voluntary departure bond, the alien must post the bond within five business days after the IJ's order. This requirement is absolute, whether or not the alien plans to appeal.
- b) Appeal filed, fails to post ordered VD bond - If the alien does not post bond within five days of the order by the IJ, but files an appeal, the Voluntary Departure Order is

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vacated, and becomes a final order of removal. However, the order is not final until such time as the Board of Immigration Appeals (BIA) renders its decision. The alien will therefore be appealing a removal order, not a grant of voluntary departure. Immediately notify the Office of the Chief Counsel of the alien's noncompliance, to ensure counsel can so inform the BIA of the alien's failure to comply with the IJ's order. Until a decision is rendered on the appeal, the alien's order of removal is not final.

- c) No Appeal Filed - If the alien fails to post the bond within five days of the IJ's order and has not filed an appeal, the Voluntary Departure order is vacated—the Alternate Order is effective date of the IJ order.
- d) PRO Database Updates - Update CASS screen's CASE-CAT field to reflect a case status (5B, 8E, 81) and CCOM with the "failure to post bond in timely matter and is a failure to comply with the IJ's order". Route A-file to the Fugitive Operations Team (if applicable), or the non-detained docket.
- e) Revocation of Bond - The Secretary of DHS may at any time may revoke a bond or parole under subsection (a), arrest the alien under the original warrant, and detain. (8 USC §1253; INA §243(b); 8 CFR §241.1(1))
- 0 Placing a Detainer on a Bonded Alien. A bonded alien taken into custody by another law enforcement for a violation of federal, state or local law, shall be considered to have violated his conditions for release pursuant to 8 CFR §241.1(1) (1) & (2) and a Immigration Detainer - Notice of Action, Form I-247 shall be placed served on the law enforcement agency and the detention facility in which the alien is being detained. This notice informs that agency to contact ICE. ICE shall take the alien into custody. The Field Office Director will conduct a custody re-determination. Pursuant to Declarations of Breach of Delivery Bonds, dated April 6,2005, a bond will be cancelled upon notification to ICE that a bonded alien will be kept in custody for more than 30 days.
- g) Multiple Bonds - If more than one type of bond i.e. Voluntary Departure Bond and Delivery Bond, OSUP Bond, etc. is required to be posted, then it is important to ensure that DACS CCOM reflects the same information that would be normally inputted into DACS BOND screen as it is incapable to reflect more than one active bond.
- h) Courtesy Bond - Is when a bond is posted at a field office, sub-office or facility on behalf of another jurisdiction. The jurisdiction where the alien is detained should also be the File Control Office (FCO) and the DACS Control Office (FCO). That office should make any custody/bond determinations.
- i) Stamps - "Placed Bond Posted", "Breached", "Cancelled" stamps on the outside of the A- file folder that flags the case as one with an active bond, as well as a reminder to monitor the bond at each stage of the removal process and to prevent the file from being prematurely retired to the Federal Record Center or National Records Center. If stamps are unavailable, write this information on the A-file jacket.

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- j) Call-Up Dates - Maintain control of a bond docket by calling-up and reviewing the cases on a regular basis. Call-up dates are the key to successful docket management, signaling when to next review the case to check on its status (extended case call-up dates of six months or more are not recommended.) and take any docket action required.
 - Give your delivery and voluntary departure bonds call-up dates that allow you to review each case for appropriate action within a few days of an order, a hearing, an appeal, a stay, a demand, or a grant of relief. The most appropriate call-up will depend upon a combination of factors: the case category, individual circumstances, etc.
 - Assign call-up dates for voluntary departure files based on the date the voluntary departure status expires. The burden of proof for compliance is upon the obligor. The alien must have departed on or before the date to which voluntary departure is granted. The obligor must provide ICE proof of alien's departure within the specified time.
- k) PRO Database Updates - The FCO is responsible to ensure BOND, BIOS, CCOM, etc. screens are updated with all relevant alien and bond information. (Notice: Field Office Directors have discretion on accepting *courtesy bonds* and FCOs failure to update DACS reflects negatively on the office location where the bond is posted.)
- l) CCOM - Use the Case Comments screen (CCOM) in DACS to record information not captured on the Bond Summary (BOND) screen. The BOND screen limits entries to preset data fields; it has no "other" section for notes. CCOM is where specific case information and status can be obtained, and the importance of ensuring conveyance of any additional information to others cannot be stressed enough.
- m) Transferring the File Control Office (FCO1 and DACS Control Office fFCOt - When a bonded alien is granted a change of venue, or the A-file is transferred ensure that the File Control Office (FCO) is transferred. Complete the Bond Location Notice, Form I-350, and forward a copy to the BFC. (Note: Failure to transfer FCO in DACS will result in the FCO reflected in DACS fully responsible for the DACS case and its updates.)
- n) Changing Obligors (Processing Bond-Ownership Transfers) - To transfer ownership of a bond, a new Immigration Bond, form 1-352, must be completed by the new obligor. Upon the posting of the new bond, the existing bond will be cancelled. (The Designation of Attorney in Fact, Form 1-312 cannot be used to change obligors.)
- o) Designation of Attorney in Fact Form 1-312 - This form was designed for deposits of cash or U.S. bonds pledged for the release of aliens in accordance with the terms of the Form 1-352. As the label on the form indicates, the form is to be used to appoint the Obligor's attorney in fact "To accept return of United States Bonds or notes deposited to secure Immigration bond," if the obligor has questions about the 1-312, contact the Bond Branch at the BFC. When the obligor submits the form, check for completeness

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and accuracy, place a copy in the file. Forward the original to the BFC. (NOTE: The 1-312 cannot be used to change obligors.)

10. Demands on Bonds

- a) General - Pursuant to the immigration bond's terms and conditions of a Delivery Bond, the agency is to use the Notice to Obligor to Deliver Alien, Form 1-340, to have the obligor present the alien when requested.
- b) Purpose and Usage - A Demand Notice may be served upon the obligor to have the alien presented for whatever purpose the agency deems necessary. The "*Purpose*" portion of the demand notice may or may not be completed as it is not part of the Terms and Conditions of the Immigration Bond, form 1-352.
- c) Recipient(s) of Notice - An 1-340 is to be sent to those obligors (Surety, Agency, or both) indicated on the Immigration Bond, form 1-352. (With only the Amwest Settlement exceptions see below, the notice may also be sent to the alien and the attorney of record.)
- d) Notice to Surety through Agent - Send notices, demands, etc., to the agent at the address of record in the bond contract, with copies to the surety company. Ensure ICE complies with the obligor's mailing instructions per block A of the 1-352. If the bond does not provide the surety's address, you have the option of forwarding the surety's copies to the company's headquarters.
- e) Service of Notice - Service on the obligor of the 1-340 may now be sent using United States Postal Service (USPS) Delivery Confirmation, PS Form 152, in lieu of the PS Form 3811 Domestic Return Receipt Requested ("Greenie"). (Note: This does not preclude the discretionary use of the "Greenie" or Delivery Confirmation on all other bond documents as a form of service.) This bar coded and numbered portion of the PS Form 3811 shall be properly affixed to the envelope being sent to the obligor, and the completed receipt portion of the PS Form 3811 stapled to the file copy of the demand notice. The postal tracking number shall be written on the notice and entered into DACS CCOM. This information must include the date of mailing and initials of the person sending the notice, for example, "[Date], Delivery Confirmation #0305 27JO 0002 1673 8045 [print initials]." (Ref: Service of Notices Relating to Immigration Delivery Bonds (11/05/2007))
 - Verification of delivery status (Delivery Confirmation or Return Receipt Requested) shall be completed within 30 **days** of service at WWW.USPS.COM *Track and Confirm* website. Simply go to the Track and Confirm website and type in the postal tracking number. The print-outs shall be placed on the right hand-side of the A-file.
 - Prior to service of a Form 1-323 Notice - Immigration Bond Breached on the obligor ensured that a printout of the delivery confirmation from the USPS

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website for the Form I - 340 Notice to Deliver Alien has been placed on the right-hand side of the A-file. Upon the filing of a Notice of Appeal or Motion, form I-290B, delivery confirmations relating to the immigration bond must be included in all Records of Proceedings submitted to the Administrative Appeals Office (AAO).

Note: Addendum to Declarations of Breach of Delivery Bonds memorandum (04/06/2005/) are as follows:

- The 2005 Memorandum recognizes that certain limited sureties are entitled to have the settlement agreement dated September 10, 1997 ("Amwest Settlement II") taken into consideration when issuing a Declaration of Breach, i.e. Form I-323, Notice - Immigration Bond Breached. In addition to the companies listed in the 2005 Memorandum, American Surety is also entitled to such consideration.
- Paragraph 2: Paragraph 2 of the 2005 Memorandum should be replaced with the following language:
- Paragraph 2: A Notice - Immigration Bond Breached, Form 1-323, will not be issued when the demand for delivery, Form 1-340, is not served on the obligor or co-obligor (if any) in the appropriate manner provided by policy memorandum entitled Service of Notices Relating to Immigration Delivery Bonds or unless otherwise prescribed.
- Paragraph 3: Paragraph 3 of the 2005 Memorandum should be replaced with the following language:
- Paragraph 3: A Notice - Immigration Bond Breached, Form 1-323, will not be issued when the demand for delivery is not mailed to the address of the obligor or co-obligor (if any) specified on the bond, Form 1-352, or, if applicable, to the new address of the obligor or co-obligor (if any), as provided in writing.
- Other than the foregoing clarifications, the 2005 memorandum remains effective.

Service and the Amwest Settlement Agreement - Settlement rules only apply to the companies addressed in the Declarations of Breach of Delivery Bonds memorandum (04/06/2005/) Amwest Surety Insurance Company ("Amwest"). Far West Surety Insurance Company ("Far West"). AAA Insurance Company and Gonzales and Gonzales Bonds and Insurance Agency ("G & G"). but only when G & G acts as agent for Amwest. American or Far West.

- Send demand notice to obligor three days before anyone else.
- Complete Amwest questionnaire and attach photo copy of picture of alien.
(Do not apply these rules to other sureties)

- f) Surety Company Change of Address - A separate obligor's change-of-address notification is required for each outstanding bond. The notification will include the obligor new address, the bonded alien's information.

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- g) Surrender Location - An alien may appear at any DRO office and must be accepted by and processed by that office (see Bond Backlog Reduction Project, (October 17, 2006)). It is therefore recommended that the notice state the specific place of appearance, but also indicate "or the nearest Detention and Removal Office".
- h) Date of Delivery - The date of delivery should be ten (10) or more business days from the date of the notice and may be for a span of time i.e. "Alien to be delivery within five days of May 6, 2008."

11. Delivery of an Alien

- a) Delivery of Bonded Alien - An alien taken into custody by an agency or agents working for or on behalf of a surety company shall comply with any Notice to Obligor to Deliver Alien, Form 1-340 (demand notice).
- b) Delivery Pursuant to a Demand - No DRO office may refuse the acceptance of an alien upon an obligor's delivery of that alien pursuant to a Notice to Obligor to Deliver Alien, form 1-340. However, it is within the discretion of FOD to determine taking that alien into custody unless otherwise noted within this memorandum.
- c) Early Delivery of an Alien - An obligor may surrender an alien before a specified date; however the obligor must submit a request or make prior arrangements to the Field Office Director (FOD). The request must contain a brief explanation as to the reason they wish to deliver the alien, as well as include date, time and place the obligor wishes to deliver the alien. The FOD will consider an early surrender of the alien. The FOD's decision is discretionary.
- d) Delivery of Final Order Alien - An obligor may deliver an alien subject to a final order without notice. The field office must take custody of the alien and cancel the existing bond, unless the alien is to be released on an Order of Supervision and the current obligor wishes to remain the obligor. (See *Accepting Delivery of Final Order Aliens*, dated May 1, 2003; *Declarations of Breach of Delivery Bonds* memorandum, dated April 6, 2005). Exception: If the alien has been complying with an Order of Supervision and the obligor cannot articulate an OSUP violation or flight risk the field office is not required to accept the alien and the bond may be continued.
- e) Receipt to Obligor for Alien's Delivery - Upon each delivery of the alien, the field office will notate such action on the form 1-340 and return that form to the obligor. The notation and the case comments in the DRO database will be the following "*Alien timely delivered to [DCO] pursuant to demand on [date]. Alien was [taken into custody and the cancelled] [not taken into custody and the bond left in place]. [Print and sign officers name.]*".
- f) Extensions beyond delivery date - Before the surrender date, the obligor may request a date of delivery beyond the date of appearance on the Form 1-340. The Field Office Director has the discretionary authority to approve or disapprove the obligor's request.

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A memo to file, updates to DRO databases and a corrected 1-340 must reflect the newly scheduled date, time and place. If changes are annotated on the Form 1-340, they must be dated and initial by the ICE official unless a new 1-340 is provided. Provide a copy of the corrected or revised copy to the alien, obligor, and the A- file.

- g) Delivery of an Alien to Other Location - If exigent circumstances arise the alien may be delivered to a DRO office other than the one indicated on the Notice to Obligor to Deliver Alien, Form 1-340. The alien may be surrendered/delivered to the nearest DRO office where that alien was apprehended, e.g. alien resides or is apprehended in New York and form 1-340 indicates alien is to appear in Detroit Field Office. Delivery of the alien to the New York Field Office would be the appropriate course of action.
- h) Date and Time of Delivery of Bonded Alien - Except if otherwise arranged or otherwise indicated on the 1-340, the alien shall be delivered to the appropriate DRO office during normal business hours, normal business days.
- i) Acceptance of a Bonded Alien - Upon delivery of a bonded alien pursuant to a demand notice, the alien may be taken into custody and a written receipt shall be provided to the delivering party and the bond shall be cancelled. If however, the Field Office Director or his/her designee determines the alien shall not be taken into custody the delivering party shall be immediately notified in writing that the surety bond will be continued. All bonded aliens must be thoroughly processed (Ref: Bond Backlog Reduction Project memorandum 10/18/06.).
- j) Receipt to Obligor for Alien's Delivery - Upon each delivery of the alien, the field office will notate such action on the form 1-340 and return that form to the obligor. The notation and the case comments in the DRO database will be the following "*Alien timely delivered to [DCO] pursuant to demand on [date]. Alien was [taken into custody and the (cancelled) (breached) (mitigated)] [not taken into custody and the bond left in place]. [Print and sign officers name.]*"
- k) Verification of the Alien's Wellbeing - Before acceptance of the bonded alien, the alien shall be quickly interviewed, away from the delivering parties to ensure that they have been appropriately cared for and neither harmed nor abused. If any form of abuse is noted or reported by the alien, local authorities shall be notified immediately and a report shall be filed. A memorandum to the Field Office Director shall be completed by close of business and added to the aliens file.
- l) Final Order Aliens - An obligor may deliver an alien subject to a final order of removal, which is not on a current Order of Supervision, without notice to the nearest DRO office. In accordance with policy memorandum entitled *Accepting Delivery of Final Order Aliens* (May 1, 2003) all final order aliens must be accepted by field offices. Therefore, upon delivery of a final order alien, the bond must be cancelled and a new custody determination rendered unless otherwise arranged with the existing obligor. (Upon issuance of a final order of removal/deportation, and although the alien may have posted a bond prior to issuance of that order, he/she must comply with that

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order or report to the nearest DRO office to have their post order custody determined. If it is determined that the final order alien is eligible for release pursuant to 8 CFR § 1241.4, then pursuant to 8 CFR §241.5(a) he/she *shall* be released pursuant to an order of supervision and may also have the additional compliance tool of an Order of Supervision Bond (OSUP Bond) placed upon him/her.)

12. Substantial Performance; Substantial Violation

To promote compliance and prevent careless but consequential mistakes, take the time to explain "substantial performance/compliance" and "substantial violation" to both obligor and alien before releasing the alien into the obligor's custody. Spell out the responsibilities of the bonded alien and obligor; if necessary, go over the technical language in the bond contract.

Compliance with the conditions specified on the bond, allowing for minor or technical exceptions, will satisfy the requirement for "substantial performance." The burden of proof of substantial performance rests with the obligor. A finding of substantial performance releases the obligor from liability (8 CFR 103.6(c)(3)).

13. Procedures for Breaching Bonds

- a) Breach Event— The breach event occurs on the date the obligor fails to comply with the conditions of the bond (aka substantial performance violation), i.e. failure to appear, failure to maintain status, failure to depart, failure to comply with Order of Supervision, etc.
- b) Breach Date - The breach date is the date reflected on the Notice of Immigration Bond Breach, form 1-323. Until the execution and service of the 1-323 the bond remains in full force and effect.
- c) Delivery Bond Breach Event - The Delivery Bond breach event occurs when the obligor fails to timely deliver an alien pursuant to a Notice to Obligor to Deliver Alien, form 1-340. The breach event date is the date or last date the obligor had to deliver the alien reflected on the demand notice.
- d) Order of Supervision (OSUP) Bond Breach Event - This type of bond is breached when the alien fails to comply with the conditions of the OSUP, form I-220B and/or fails to appear in accordance with a demand notice or pursuant to the conditions of the OSUP. The breach event date is the date the alien violated the OSUP or failed to appear pursuant to demand or the OSUP.
- e) Voluntary Departure (YD) Bond Breach Event - This type of bond is breached when the alien fails to depart on or before the date specified. (The burden of proof to provide verification of departure/compliance of the voluntary departure order is upon the obligor.) If ICE does not receive verification of departure within 30 days of the required date of departure, the bond will be breached. The Breach event occurred the date the alien was required to depart the United States.

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- f) Notice—Immigration Bond Breached. Form 1-323 - This notice is to inform the obligor of his/her failure to comply with the conditions set when the bond was posted and has resulted in the bond being breached. The notice of rights to appeal that decision is also included. This must be specific in detailing what violation occurred that resulted in the breach action (Original to A-file). Upon service of the form 1-323, no further bond actions are required unless an appeal is filed (see below *Bond Breach Appeals*).
- g) Recipients of Notice of Breach - The form 1-323 and I-290B is to be served upon the obligors) indicated in Pt. A of the 1-352.
- h) Service of Notice of Breach -The form 1-323, shall be served on the obligor via regular mail with the Notice of Appeal to the Administrative Appeals Office, Form I-290B.
- i) PRO Database Updates - Immediately upon completion of breach notification, all DRO databases must be appropriately updated.
- j) Breach Finalization - Unless an appeal is filed, the BFC will administratively finalize the breach 60 days from the date the breach notice is served. (See Final Breached Bond Procedure, (October 17, 2006))
- k) Bond Absconder - Upon execution of the breach bond documents, the alien is now considered a Bond Absconder (See below).
- l) Overtured decisions - Unless the Administrative Appeals Office (AAO), FOD or Federal Courts overturn the breach, the decision stands. If the breach decision is overturned the decision must be reflected in CCOM and the BFC must be notified. If the FOD does not agree with the AAO decision, the FOD may follow the Motion to Reopen (MTR) instructions below to reopen the bond.

For additional guidance for breaching cash and surety bonds, see *Bonds Field Financial Procedures*, sections 5 and 6 (<http://ofm.ins/static/pdf/bonds.pdf>).

- 14. Mitigation - See Supplemental Guidance to Accepting Final Order Aliens memorandum (05/12/2003).

15. Bond Appeals

- a) General - Pursuant to 8 CFR §103.3 and DHS Delegation 150.1 (March 1, 2003), the Administrative Appeals Office (AAO) has jurisdiction and adjudicates cases involving immigration bond breaches. Both the agency and the appellant are required to comply with filing instructions provided by the form and the regulations.
- b) Filing an AAQ Appeal - The obligor has 30 days from the date of issuance (33 days if the notice was mailed) during which to submit the I-290B, Notice of Appeal, to the ICE field office that issued the breach. If the last day to file falls on a Saturday, Sunday, or

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legal holiday, the filing period will be extended to the next business day. The obligor must follow the instructions as set forth in 8 CFR 103.3.

- c) Rebuttal Brief in Support of Agency Position - DRO will submit an agency brief rebutting the appellant's argument and supporting the agencies position. The Field Office Director or his/her designee shall sign this brief. This will be the cover sheet to every Record of Proceedings (ROP) that is forwarded to the AAO.
- d) Date and Time Stamp - The appeal Form I-290B will be stamped with the time and date of receipt. If no stamp is available the date and time shall be written on the appeal and name shall be legibly signed, printed, and office location. On the Notice of Breach of Bond, Form I-323, record that an appeal was filed and the date; forward a copy to the DMC.
- e) Improperly Filed Appeals - These actions will be automatically rejected set forth in 8 CFR 103.3(a) (2) (v). The rejection shall be in the format provided with a complete narrative and the regulatory basis of the rejection. It shall be signed by the Field Office Director or by a designee with his/her signature authority. Any funds submitted with an improperly filed appeal shall not be returned with the rejection notice (8 CFR 103.3(a) (2) (v) (B) (1)). The notice shall be sent out using U.S. Postal Service Delivery Confirmation service. Examples of improperly filed appeals are, untimely (unless a brief is filed in support of the appeal), insufficient funds or invalid means of paying filing fees (e.g., bounced check or other financial instrument returned as non-payable), and a person or entity other than the obligor, the obligor's attorney of record, or the surety agent.
- f) Untimely - A declaration of breach not appealed during the filing period is administratively final. An appeal received after the deadline is ineligible for AAO review but may, if it meets the requirements, be processed as a motion to reopen or reconsider (8 CFR §103.3(a)(2)(iii)).
- g) Processing the Appeal - Upon DRO's receipt of an appeal, the appeal will be reviewed and if appropriate forwarded to the AAO with the ROP within 30 days. The case must be reviewed in its entirety to determine whether arguments presented on appeal overcome the basis of the breach. If the grounds of the appeal seem prima facie valid, the officer in charge may treat the appeal as a motion to reopen or reconsider. If, after reviewing the case, the officer in charge finds the breach justified, you must promptly prepare a Record of Proceeding (ROP) and forward the appeal to the AAO.
- h) Officer-Initiated Reconsideration - You may receive information that, if obtained earlier, would have resulted in some outcome other than the bond's being breached (e.g., alien was incarcerated or had already departed in accordance with a grant of voluntary departure). In those cases, the officer in charge has the discretionary authority to file a Motion to Reopen (MTR). (See below MTR section.)

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- i) Creating the Record of Proceeding - Keep these records in reverse-chronological order, from the earliest (at the bottom of the file) to the latest (placed on top). Exception: upon receipt of a brief filed in support of the I-290B, insert it immediately below the I-290B, irrespective of filing date.

The Record of Proceeding (administrative record) will contain copies of the following documents:

- ☐ Form G-28, Notice of Entry of Appearance as Attorney or Representative;
 - ☐ Form I-290B, Notice of Appeal or Motion, plus briefs or attachments;
 - ☐ Form 1-323, Notice-Immigration Bond Breached;
 - ☐ Form 1-166, Notice to Surrender for Deportation;
 - ☐ Form 1-340, Notice to Obligor to Deliver Alien;
 - ☐ U.S. Postal Service Form PS 3811, Return Receipt (proof of delivery of the I-340) and/or the copy of the Delivery Confirmation, PS Form 152, printout of the delivery confirmation from the USPS.com website;
 - ☐ Bond Questionnaire and worksheet (Amwest, G&G and Farwest surety companies);
 - ☐ Power of attorney (surety bond) or
 - ☐ Form 1-305, Receipt for U.S. bonds or Notes, or Cash, Acceptance as Security on Immigration Bond (cash bond);
 - ☐ Form 1-352, Immigration Bond;
 - ☐ Appellate decision of BIA;
 - ☐ Final order of Immigration judge; and
 - ☐ Form 1-862, Notice to Appear, or other charging document.
- j) Motion to Reopen or Reconsider (MTR) - If the obligor files a motion to reopen or reconsider an earlier decision of the AAO, place a copy of the appellate decision, the motion, and any attachment at the top of the record of proceeding.
- k) Withdrawal - The obligor may submit a written withdrawal of an appeal before a decision is rendered. Upon receipt of a withdrawal of an appeal, an acknowledgement

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of receipt of the appeal must be sent to the appellant. Note: There is no canceling a withdrawal once it is submitted.

- l) Dismissal - If the AAO dismisses an appeal, update the DRO databases accordingly. Inform the Burlington Finance Center (BFC) by forwarding a copy of the 1-323, stamped or marked "Appeal Filed, Dismissed on [date] and Final on [date]."
- m) Sustained - If the AAO upholds an appeal, forward a copy of the decision to the BFC, along with a copy of the 1-323, stamped or marked "Appeal Filed, sustained on [date]." Process the bond as required by the ruling; update DRO databases accordingly.
- n) Mitigation - If an obligor who has submitted mitigation request later files an appeal based on the same breach event, the AAO will not consider the appeal. In such a case, forward a copy of the appeal directly to the officer in charge adjudicating the mitigation request and forward the original to the AAO with an attached copy of the mitigation request.
- o) DRO Database Updates - Immediately upon receipt of a properly filed appeal, ensure that CCOM is updated with the comment, "[date], Breached Bond Appeal, form I-290B, received this date and BFC notified of appeal filing, [initials]." CCOM will then be updated to state, "[date] ROP for bond appeal, form I-290B completed and forwarded to AAO this date. [Initials]."

16. Delivery Bond Cancellation

- a) General - An immigration bond is cancelled upon the obligor's compliance with the terms and conditions as set forth in the Immigration Bond, form 1-352.
- b) Unenforceable Bond - A cancellation of a bond will occur upon any of the following, provided they occur prior to the date of a breach event, (see *Declarations of Breach of Delivery Bonds*, memo dated April 6, 2005)
 - Deportation, exclusion or removal of the bonded alien
 - Valid proof of the bonded aliens timely departure (VD Bond)
 - Self-deportation or removal (Delivery Bond)
 - A grant of permanent resident status or U.S. Citizenship
 - Terminated immigration proceedings
 - A final decision on the bonded aliens immigration court proceeding, or any other event that allows the alien to remain permanent in the United States
 - ICE taking the bonded alien into custody
 - ICE's receipt of notice that the alien has been taken into custody by another federal, state or local law enforcement agency and will be detained for more than 30 days
 - Upon posting of an ICE detainer while the alien is in the custody of another agency
 - Death of the bonded alien

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- Any other event that renders the alien no longer removable under original charging document or warrant of removal.
- c) Upon Posting of Voluntary Departure Bond - Some terms and conditions require that a Delivery Bond be cancelled upon posting of a VD Bond. Please review the general terms and conditions of the Immigration Bond, Form 1-352.
- d) Voluntary Departure with no bond - If the immigration judge neither requires a bond the Delivery Bond is not cancelled and remains enforceable.
- e) Multiple bonds - If an alien granted voluntary departure by an immigration judge appeals the finding of removability, you must maintain both bonds posted on the alien. This situation occurs because the regulations (8 CFR §1240.26(c) (3)) allow no exception to the five-business-day posting for voluntary departure and because ICE is under no legal or logical requirement to cancel the delivery bond after the posting of a voluntary departure bond. Maintain both bonds until the appeal is decided. If the appeal is dismissed, you must cancel the delivery bond; if the BIA grants the alien a benefit cancel both bonds.
- f) Compliance with Voluntary Departure (Verification of Departure) - Upon receipt of evidence of compliance with voluntary departure within thirty (30) days the bond will be cancelled.
- g) Database Updates - Update DRO databases with cancellation information accordingly.
- h) Schrode Rule - The rule established by Shrode v Rowoldt, 213F.2d 810 (8th Cir. 1954) stipulated that ICE would cancel any bond which was not breached prior to the expiration of the six month removal period. This case was predicated on former section 242(c) of the Act, 8 U.S.C §1252(c), which was deleted by section 306 of the IIRAIRA, effected April 1, 1997. This section of law no longer exists.

17. Verification of Departure

- a) Verification of Departure Defined - Documentation and/or clear and convincing evidence submitted to support the claim of departure from the United States.
- b) Verification of Departure Forms - Notice of Action-Voluntary Departure, form 1-210, Nonimmigrant Checkout Letter, form G-146, and Notification of Departure of Alien (Bonded), form 1-392. Blank versions of these forms may be publicly distributed.
- c) Electronic Verification Information Process (eVIP) - A partnership between the Office of Detention and Removal Operations (DRO) and the Department of State's (DOS) Post Liaison Division's Visa Office. The DOS will electronically transmit alien departure verifications forms.
- d) Filing and Routing - Upon receipt of a verification of departure form and/or evidence immediately interfile in the A-file.

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- e) Database Verification - The utilization of various DRO databases to verify departure of an alien is authorized (i.e. TECS, IBIS, US VISIT, etc.) However, it is the obligor's or alien's responsibility to provide evidence of his/her departure. The printout of the document must be attached to the cancellation or breach decision.
- f) Case Closure and Bond Action - Upon receipt of a verification of departure or evidence thereof, determination of case closure is to be made which may include a bond breach or cancellation.

18. Change of Obligor

Changing of an obligor requires the posting of a new bond with an Immigration Bond, form I-352 signed by the new obligor.

Upon posting and receipt of the new obligor's bond, the previous bond shall be cancelled.

19. Bond Motion to Reopen

- a) Motion to Reopen (MTR) Defined - Upon determination that there are appropriate grounds to correct a decision that was made in error or upon overlooked or newly discovered facts or law, the decision may be corrected by the use of appropriate electronic letters from the attached notices of motions and decisions. (Ref: Reversing Declarations of Breach of Delivery Bond, (06/19/2006))
- b) Reversing Cancellations -
 - Reversing the cancellation of a bond requires the use of the two letters, one letter for notice of intent to reopen/reconsider and a second letter for the final decision.
 - Notices to reconsider/reopen bond cancellations shall be served on the surety and agent/co-obligor by regular mail. Action on the motion to reconsider must be deferred for 33 days to allow for the surety/co-obligor to submit a brief. If the obligor or agent/co-obligor timely submits a brief, the brief shall be given due consideration. If the submission is supported by persuasive evidence, the reconsideration motion should be withdrawn, and the surety and agent co-obligor given written notice of the withdrawal.
 - If the obligor or agent/co-obligor waives the submission of a brief or fails to timely submit a brief within the allotted time including any extensions, or if the brief is not persuasive, the reconsideration decision shall be issued and the surety and agent/co-obligor furnished with written notice of the finality of the reconsideration decision.
 - Reconsideration of the erroneous cancellation of cash bonds must be completed prior to the refunding of the bond money by the Debt Management Center (DMC). If upon learning that the agency cancelled the bond in error and upon contacting the DMC it is discovered that the money was returned to the Obligor then a memorandum to file shall reflect the reasons the bond should have been breached and no further action may be taken on that bond.

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- If the money has not been refunded the same procedure should be followed as with surety company bonds EXCEPT THAT THE MOTION MUST BE FAXED IMMEDIATELY to the Debt Management Center at (802) 288-1226.

20. Reversing Breaches

- The combined motion/decision shall be served on the surety and agent/co-obligor by regular mail.
- Decisions upon motions to reconsider declaration of breach decisions require the selection of the bond either being reinstated or cancelled as the circumstances demand.
- Decisions upon motions to reconsider declaration of breach decisions require the use of the appropriate MTR letter and, if the decision requires that the bond be cancelled, an 1-391 must be issued in addition to the decision form. Otherwise, if the decision requires reinstatement of the bond, only the MTR letter should be used.

20. Aged Bonds

- a) Aged Bond Defined - Are defined as a Delivery Bond with a posting date of three years or older or an unbreached Voluntary Departure date beyond the 31 days or more beyond breach event or an expired VD bond not timely breached.

All Aged Bonds files are to be routed to the Bond Backlog Action Team (BBAT) unless:

- A hearing date is scheduled within 180 days
 - VD Bond with a pending 9th or 2nd CCA Petition for Review (PFR)
 - The last action taken on case was within the last thirty (30) days
 - No bond actions are required
 - VD Bond with a BIA appeal pending
 - Classified
- b) Reporting Requirements - An *Aged Bond* monthly report will be submitted to the Bond Management Unit (BMU), reflecting status of all *Aged Bond* cases within each Area of Responsibility (AOR) and the status of each case. This report is due by the 15th of every month. Management of this report should be assigned to your AOR's Bond Control Specialist (BCS) or Deportation Assistant.

21. Missing or Lost A- files

Upon determination that a file is missing or lost the following actions will be taken:

- a. Update the Central Index System (CIS) - The field office must update CIS immediately to reflect that the file is "Lost" which will notify other offices of the file's status.

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- b. Request Copies of Bond Documents - Immediately contact the BFC and request copies of all bond documents.
- c. Create a Temporary File (T-file) - Create a T-File using all bond documentation.
- d. Update the National File Transfer System (NFTS) - Update the T-file location in NFTS.
- e. Copies of Other Documents - The field office must attempt to locate any copies of relevant documents, i.e. Enforce, Ident, NCIC, FD-249, OSUP, etc., for inclusion in the T-file.
- f. Bond Action - Upon creation of the T-file, take immediate and appropriate bond actions, demand notices, cancellations, breaches, or continue the bond.
- g. DACS CCOM Update - enter "[date], A-file missing/lost, T-file created [initials]."
- h. T-File Routing - If it is determined that the bond shall be continued, i.e. the alien is placed on an OREC, OSUP, ongoing legal proceedings or a FugOps case, the field office may hold onto the file. If however, the bond is cancelled or breached and the case is no longer active, the T-file shall be immediately routed to the National Records Center (NRC).

BBAT A-File Requests - Upon request of the A-file by the BBAT and if the file is determined to be lost/missing the following actions must be taken:

- a) Update the Central Index System (CIS) - The field office must update CIS immediately to reflect that the file is "Lost" which will notify other offices of the file's status.
- b) Notify BBAT - Notify the BBAT requesting official that the file is missing/lost.

22. Information Management Systems for Bonds

- a) Burlington Financial Center - The BFC is a sub-office of The Office of Financial Management (OFM), located at 166 Sycamore Street, Williston, VT 05495. The BFC is responsible for tracking the financial aspect of bonds. The BFC maintains the bond financial receipts and bond financial data. (<http://ofm.ins/exec/BFC/BFC2.asptfbonds>).
- b) Bond Management Information System (BMIS). The Burlington Financial Center uses BMIS to control the financial aspects of Immigration-bond administration: processing new bonds, cancellations, and breaches; following-up with DRO officers on bond status; accounts receivable; debt collection, etc.

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(The Burlington Financial Center refers delinquent debt to Financial Counsel. If Financial Counsel is unsuccessful, the debt may be referred to Department of Justice for litigation or bond settlement or to the U.S. Treasury for further action.)

- c) BMIS Access - To obtain access to the BMIS database, complete the Request for "View-Only" Access form (see http://ofm.ins/static/pdf/BMIS_Request.pdf). Simply provide your office location, PICS user ID, signature, and your supervisor's authorizing signature. Once you have access, refer to *Bond Management Information System: Instructions for Field Users with View-Only Access*.

23. Bond Absconder

- (a) Bond Absconder Defined - An alien released on bond, in immigration proceedings and is not subject to a final order of removal, deportation or exclusion and whose bond has been breached.
- (b) Warrant of Arrest of Alien. Form 1-200 - Upon completion of the Notice of Breached Bond, form 1-323 and 1-200 will be completed for execution by the non-detained officers.
- (c) Apprehension Requirement - Immediately upon completion of the bond breach actions the file is to be routed to the local non-detained docket officers for immediate apprehension of the alien. Update the A- file and DRO databases with information regarding the attempt(s) to locate and apprehend the bond absconder.
- (d) Chief Counsel Notification - Upon breaching of the bond notify the Chief Counsel's office with jurisdiction over the immigration case. The immigration case may be impacted by the alien's conditions of release violation. Update DRO databases of this notification accordingly.
- (e) Custody Determination - Upon arrest of a Bond Absconder the FOD will make a new custody determination taking into account the alien's breached bond(s).
- (f) Bond Absconder Report - All field offices will submit a report to the BMU by the 15th of each month. This report will include apprehended Bond Absconders by Name, A-number, Criminal/non-criminal, and nationality.

24. Fugitive Operations (FUGOPS)

- a) Fugitive Alien Defined - National Fugitive Operations Program (NFOP) has defined a fugitive alien as, "An alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to a Detention and Removal Officer after receiving notice to do so."

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- b) Fugitive with an Open Bond - An open bond on an alien subject to a final order of removal, deportation or exclusion does not change an alien's fugitive status.
- c) Post Order Custody Determination - Upon issuance of a final order of removal/deportation, and although the alien may have posted a bond prior to issuance of that order, he/she must comply with that order or report to the nearest DRO office to have their post order custody determined. If it is determined that the final order alien is eligible for release pursuant to 8 CFR § 1241.4, then pursuant to 8 CFR 241.5(a) he/she *shall* be released pursuant to an order of supervision and may also have the additional compliance tool of an Order of Supervision Bond (OSUP Bond) placed upon him/her. (Any previous outstanding bond will be cancelled once the alien has been taken into ICE custody and a new bond must be posted.)
- d) Voluntary Departure Fugitive - Failure to post a VD Bond within five days of the order or failure to depart on or before the date of voluntary departure expires, constitutes a violation of the conditions as set forth upon the granting of voluntary departure. Therefore, the violation results in a breach of the bond and the alien being subject to a final order of removal being the date after day the voluntary departure expired and the alien is now a fugitive alien.
- e) Apprehension of bonded alien - An alien may be taken into custody at any time subsequent to bond posting if at anytime it has been determined it is to the agency's interest, or that the alien has violated the conditions of his/her release (8 CFR §241.1(0(1) & (2))).
- f) Demands and Pending Federal Litigation - Federal litigation of immigration proceedings generally involves a petition to review the Immigration Judge's administrative decision for legal sufficiency. This petition may also include a request for a stay of removal, or a petition for a stay of removal may be filed separately. Pursuant to policy established by the NFOP, if an alien has received a final order (8 CFR §1241.1), that alien should be taken into custody. If it is determined that the final order alien is eligible for release pursuant to 8 CFR §1241.4, then pursuant to 8 CFR §241.5(a) he/she *shall* be released pursuant to an order of supervision and may also have the additional compliance tool of an Order of Supervision Bond (OSUP Bond) placed upon him/her. (Any previous outstanding bond will be cancelled once the alien has been taken into ICE custody and a new bond must be posted.)

Those aliens with a delivery bond and subject to a final order, with or without a stay of removal or a petition for review by the CCA, shall have a Notice to Obligor to Deliver Alien, Form 1-340, served upon the obligor to present the alien. (The Field Office Director shall have the discretion of the service of the demand notice prior to the FUGOPS Team attempting to locate and apprehend the fugitive alien.) Upon appearance or apprehension of the alien, he/she shall be processed in accordance with previous bond memoranda (See BMU website). Post order custody shall be determined in accordance with the citation

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above (except those aliens reporting on a current and valid OSUP or as otherwise advised by Chief Counsel).

25. Alternatives to Detention (ATP)

Questions regarding bonds and ATD must be directed to the HQ ATD unit. (ATD programs are additional compliance tools available to the field. The bond policies and procedures must be adhered to when used in conjunction with other programs.)

26. Bond Control Specialist duties/responsibilities

- a) General - The mission of a Bond Control Specialist (BCS) is to manage, monitor and overall quality control of bonds in their field offices Area of Responsibility (AOR). *The AOR will refer to the field office and all offices that are under the jurisdiction of that field office* to which they are assigned. The BCS will be able to make proper bond determinations such a breach, cancel, or if the bond should continue in place. To make these determinations the BCS should have a thorough understanding of bond policies and procedures, as well as the laws and regulations that govern them. They should ensure the completeness and accuracy of all bond actions within their AOR. The BCS should be the bond subject matter and technical expert. They are to ensure the timeliness of bond case actions (case call-ups) upon change in alien's status i.e. final order rendered, VD granted, case administratively closed, etc. (see Position Description, dated March 31, 2005) The BCS will serve as the liaison to the Headquarters Bond Management Unit (HQBMU), Burlington Finance Center (BFC), and Administrative Appeals Office (AAO).
- b) Case Management - The BCS is responsible for oversight and management of bond cases, which are assigned to their AOR. These duties can include the review and determination/adjudication on bond cases that present motions; making decisions which involve points of law, regulations, and policy/procedure. The BCS is responsible to ensure the timeliness of actions of all bond cases within their AOR. They are to ensure that all adjudications or officer required actions taken when any change in the alien's status, custody conditions, and/or newly gathered information requiring updated bond and custody re-determination.
- c) Liaison Duties - The BCS is the primary contact point on bond issues with the HQBMU, BFC, BBAT and AAO. (If the office does not have a BCS a Supervisor or manager should make contact with these entities.) The BCS must ensure that all HQBMU is notified of the office's personnel contact information for those involved in the bond process and the implementation of changes and updates of bond policy/procedures. It is imperative that the BCS ensure that all HQBMU requests to the field are expeditiously and accurately responded too.

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(b)(7)(E)

- d) Appeals coordinator - The BCS will review for quality control all bond appeals and ROP's, as well as ensure that rebuttals/responses to those appeals (see §12.8(c); (k)) are included and served to the AAO.
- e) Administrative Duties - The BCS will review all incoming and outgoing bond cases to ensure that appropriate bond actions have been taken. This includes FCO transfers, bond adjudication decisions, appeals, appropriate file routing (Fugitive Operations, Non-detained, NRC, etc.), appropriate service of notices of actions, etc. The BCS is responsible to ensure all bond logs are complete and accurate.
- f) Report Requirements - The BCS will create monthly reports of all bond actions, activities; to include numbers of breaches, cancellations, continuations, and postings, as well as the dollar amounts involved with each category. Locally generated error reports should be generated indicating the various types of errors found in the course of his/her bond quality control duties. These reports should help reflect office bond activities, volume and bond activity quality. The reports are to be forwarded to the Field Office Director or his/her designee and available to HQBMU upon request.
- g) PRO Databases - The BCS is also responsible for the quality control of DACS bond data properly and completely being inputted into the appropriate fields. The BCS is responsible for all outstanding bond cases reflected in DACS in his/her AOR and therefore it is imperative for the BCS to ensure that all bond cases no longer in their AOR are properly transferred out of that FCO and the BFC notified of that change.

(Although this memorandum is not inclusive and does not provide details on each aspect of the posting and management of an immigration bond, it attempts to provide the most current and relevant information available. The Bond Management Unit (BMU) will continue to provide updates, clarification and guidance. Please direct your questions regarding this guidance via e-mail to Bond Management Unit at (b)(7)(E))

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ICE.2014-FOIA-01578.000105

U.S. Department of Homeland Security
4251 Street, NW
Washington, DC 20536



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Field Office Directors
Deputy Field Office Directors

FROM: John P. Torres
Director

AUG 24 2007

A handwritten signature in dark ink, appearing to read "John P. Torres".

SUBJECT: Juveniles Encountered During Fugitive Operations

Purpose

This memorandum provides clarification to the Office of Detention and Removal Operations (DRO) Fugitive Operations Teams (FOT) who encounter U.S. citizen (USC) and Lawful Permanent Resident (LPR) juveniles during execution of enforcement initiatives targeting fugitive aliens.

Summary

The attached memorandum entitled "*ICE Transportation, Detention and Processing Requirements*" remains the binding guidance to Special Agents-in-Charge (SAC) and Field Office Directors (FODs) while conducting immigration enforcement operations. However, as a matter of policy, DRO FOTs should not take custody of or transport a juvenile (i.e. child under the age of 18) who is either a USC or LPR and who is not being processed for an immigration violation. FOTs, who encounter a fugitive alien responsible for the custody of a USC/LPR juvenile, must, in this order of preference, coordinate the transfer of the USC/LPR juvenile into the safekeeping of (1) the nearest child welfare authority; (2) local law enforcement; or if options (1) and (2) are inconsistent with operational requirements, then FOTs must (3) carefully document the fugitive alien's request for transfer of the USC/LPR juvenile into the safekeeping of a verifiable third party.

The use of the first two options is strongly encouraged. Child welfare authorities and local law enforcement are better suited for making determinations related to child custody matters. Even when the fugitive alien demands transfer to a third party, FOTs are to work through child welfare authorities or local law enforcement and defer to their transfer determinations. Under limited circumstances and only when specifically approved by their FOD, FOTs may temporarily safeguard USC/LPR minors.

To the greatest extent possible, FOTs should coordinate with child welfare authorities prior to arrest of fugitive alien parents. All DRO FOTs and FOT members must maintain a current and relevant list of contacts for such agencies.

SUBJECT: Juveniles Encountered During Fugitive Operations

Page 2

If the child welfare authority and local law enforcement cannot respond in a timely manner, so as to jeopardize operational objectives, and the fugitive alien requests assistance in transferring safekeeping of the USC/LPR juvenile to a third party, FOTs should:

1. Document the inability of the welfare authority and local law enforcement to take timely custody of the minor;
2. Document in writing the fugitive alien's request to release the USC/LPR juvenile to an identified third party (preference is for the request in the fugitive alien's own handwriting);
3. Facilitate the fugitive alien's contact with the third party;
4. Verify the identity of the third party through government issued identity cards prior to transferring the USC/LPR juvenile into the safekeeping thereof; and
5. Forward copies of relevant documentation (inability of the welfare authority/local law enforcement to take timely custody of the USC/LPR juvenile) to the child welfare authority for further processing.

Where the child welfare authority and local law enforcement are unresponsive and the fugitive alien parent identifies no third parties, FOTs should seek guidance from their FOD through their chain of command.

In exigent circumstances, when all of the above options are unavailable, it is recommended that the sole care provider be placed on one of the Alternatives to Detention (ATD) programs available in the respective Field Office; all ATD processing should be done on site.

Questions regarding this policy should be addressed to (b)(6),(b)(7)(C) Deputy Assistant Director (DAD), Compliance Enforcement Division (CED) at (202) 616 (b)(6) or via e-mail at

(b)(6),(b)(7)(C)

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TRANSPORTATION CONSENT FORM
Department of Homeland Security
Immigration and Customs Enforcement

Know all men by these presents:

Whereas I, _____,
(NAME)

_____ to be a passenger on DHS/ICE aircraft/vehicle
(NAME)

_____. I give my consent freely and entirely on my own initiative.
(TAIL/LICENSE NO.)

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(NAME AND TITLE)

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Field Office Directors AUG 3 2006

FROM: John P. Torres
Acting Director

A handwritten signature in black ink, appearing to read "John P. Torres".

SUBJECT: **Operation Secure Streets – Directive and Guidance**

This Memorandum serves to provide directive and guidance for Operation Secure Streets, an operation developed to address illegal aliens convicted of violations of local driving under the influence laws in your respective areas of responsibility (AORs).

The 23 Field Office Director (FOD) offices shall conduct threat assessments to identify the scope of the problem in their AORs. The Headquarters Detention and Removal Operations (HQDRO) Compliance Enforcement Division (CED) will coordinate with the FODs to develop a five-step process for implementation of Operation Secure Streets, to ensure uniformity and consistency in identifying and prioritizing targets and establish coordination between ICE DRO and other law enforcement agencies.

The Five-Step process, explained in detail below, will be used to identify threats and obtain intelligence, analyze/exploit intelligence, prioritize targets and coordinate with U.S. Attorneys and law enforcement partners, to commence enforcement actions against illegal aliens convicted of violating the drunken driving laws in your AOR.

Step 1 - Identify Threats and Obtain Intelligence:

Effective immediately, FOD Offices shall contact all local law enforcement, probation and parole offices within their AOR to obtain electronic lists of foreign born persons convicted of drunk driving offenses. These lists shall then be forwarded to the Law Enforcement Support Center (LESC) and the Fugitive Operations Support Center (FOSC) for assessment.

Step 2 - Analyze/Exploit Intelligence:

The Fugitive Operations Unit (Fug Ops) within the HQCED shall coordinate the simultaneous collection of the data described in Step 1 with LESK and FOSC. FOSC exploits the data for potential commercial database leads and establishes links and relationships within the data. The LESK runs the data against various ICE and commercial databases in order to identify potential violations under ICE's jurisdiction. The FOSC and LESK work product shall be analyzed and packaged as target folders.

Step 3 - Prioritize Targets:

As target folders are completed, Fug Ops will forward them to the respective FODs for action. The FODs shall prioritize the target folders based on the above analysis and any additional information developed locally. The aliens are NOT limited to those possessing final orders of removal and shall be prioritized as follows:

1. Aliens amenable to removal with prior aggravated drunk driving convictions.
2. Aliens amenable to removal with arrest records indicative of recidivist drunk driving.
3. Aliens amenable to removal with substance-impaired driving convictions.
4. Aliens previously convicted of drunk driving who may be prosecuted for a federal or local violation of law.
5. Aliens amenable to removal without criminal convictions, but who have been previously arrested for alcohol-related or drug-related driving offenses.

If at any time during the process targets are identified as imminent threats to national security or public safety, FODs will initiate immediate enforcement action on those targets.

Step 4 - Coordination with U.S. Attorneys and Law Enforcement Partners:

Upon completion of target prioritization, the FODs shall meet with their respective U.S. Attorneys, brief them on Operation Secure Streets, and seek prosecution as appropriate for those subjects targeted for criminal arrest. FOD offices shall contact federal, state and local law enforcement agencies to ensure coordination and cooperation of enforcement actions.

Step 5 - Enforcement Actions:

Following coordination and cooperation with partner law enforcement agencies, the FODs shall commence enforcement actions to apprehend aliens amenable for removal and/or for existing violations of law. These arrests will be made in the prioritized order listed in Step 3 and will serve as an opportunity to develop sources of information.

Information and intelligence developed during debriefing of gang members should be exploited and utilized for subsequent enforcement actions.

Taskings: All Department of Homeland Security Counterpart Offices

All FODs are directed to contact their respective counterpart at Office of Investigations (OI) and the Border Patrol Chiefs and Port Directors at Customs and Border Protection (CBP) to brief them on Operation Secure Streets, and to establish local protocols for FOD notification when an illegal alien drunken driver is encountered by OI or CBP.

Reporting Requirements:

Operation Secure Streets is expected to receive significant attention from Assistant Secretary Myers and ICE HQ is required to prepare a weekly update on its progress and success.

Therefore, the results of this operation shall be provided in the National Fugitive Operations Program Weekly Report, which is revised to allow for Operation Secure Streets reporting. In addition, all Operation Secure Streets activity shall be entered and captured in the operational field within the Fugitive Case Management System (FCMS).

It is essential that **all** FODs provide timely notification of **all** activity involving apprehensions conducted under the auspices of this operation. Advanced telephonic notification and an A/S Note stating impending enforcement activities relating to this operation shall be made by the Assistant Field Office Director (AFOD) or Deputy Field Office Director (DFOD) to Fugitive Operations Unit Chief at (202) 616-(b)(6) or Fugitive Operations Staff Officer (b)(6), (b)(7)(C) at (202) 616-(b)(6) **24 hours** prior to commencement of the activity. Upon completion of the enforcement action, the AFOD/DFOD shall electronically notify Program Manager (b)(6) and Special Assistant (b)(6), (b)(7)(C) (202) 616-(b)(6) of the results of the activity. This procedure is in addition to normal reporting requirements through the Significant Event Notification system and is required for all FOD offices.

When appropriate and warranted, FODs shall utilize their local public affairs officers to highlight the successes of Operation Secure Streets. In addition, FODs should utilize existing ICE Attaché offices to further enforcement actions or enhance coordination with foreign counterparts by coordinating with (b)(6), (b)(7)(C) acting Unit Chief of the Travel Document Unit.

Any comments or questions regarding Operation Secure Streets should be directed to Deputy Assistant Director (b)(6), (b)(7)(C) Compliance Enforcement Division, at (202) 616-(b)(6), (

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 21, 2010 5:14 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: Re: Gang Arrests

Way to go. Thanks for the heads-up.

From: (b)(6), (b)(7)(C)
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Sent: Thu Oct 21 15:11:27 2010
 Subject: Gang Arrests

This may or may not catch some press.

NOTE: that the residents of the apartment complex openly thanked DHS and Metro Agents for taking an active role in protecting the public.

Report Title: Nashville Gang Enforcement Operation

Over the past few weeks, Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F) identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

On October 20, 2010, HSI, ICE/FOT, and Metro Gang Unit conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang unit with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of foreign nationals, specifically street gang members and their associates.

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20
 Immigration Status: NTAs (13), B&Bs (3), Reinstatements (3), BIA Appeal Pending (1) - released on order of supervision by ERO
 Nationalities: Honduras (9), Mexico (7), Guatemala (4)
 Gang Members/Associates: 1 - Surenos Locos Criminales (SLC), a SUR 13 clique
 Criminal Charges: None
 SAS: (b)(7)(F)

Thank you,

(b)(6), (b)(7)(C)

Resident Agent in Charge

4/20/2011

US Department of Homeland Security
Homeland Security Investigations (HSI)
612 Hangar Lane, Suite 101
Nashville, TN 37217
O-615-781- (b)(6) C-615-566- (b)(6) F-615-781-5472
(b)(6)

4/20/2011

ICE Rule 26.00008
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(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 21, 2010 5:11 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: Gang Arrests
 Attachments: (b)(7)(C) Nashville Gang Ops.htm

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NOTE: that the residents of the apartment complex openly thanked DHS and Metro Agents for taking an active role in protecting the public.

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Total Administrative Arrests: 20
 Immigration Status: NTAs (13), B&Bs (3), Reinstatements (3), BIA Appeal Pending (1) - released on order of supervision by ERO
 Nationalities: Honduras (9), Mexico (7), Guatemala (4)
 Gang Members/Associates: 3 - Surenos Locos Criminales (SLC), a SUR 13 clique
 Criminal Charges: None
 SAS: (b)(7)(C)

Thank you,

(b)(6), (b)(7)(C)

Resident Agent in Charge
 US Department of Homeland Security
 Homeland Security Investigations (HSI)
 612 Hangar Lane, Suite 101
 Nashville, TN 37217
 O-615-781- (b)(6) C-615-566 (b)(6) F-615-781-5472
 (b)(6)

4/20/2011

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 19, 2010 9:15 AM
To: (b)(6), (b)(7)(C)
Subject: FW: Clairmont Apartment Knock and Talk
Attachments: NV ops plan 2 101810.pdf

Thank you, (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, October 18, 2010 4:22 PM
To: (b)(6), (b)(7)(C)
Subject: RE: Clairmont Apartment Knock and Talk

(b)(6), (b)(7)(C) as you know, just stress safety.....(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, October 18, 2010 3:24 PM
To: (b)(6), (b)(7)(C)
Subject: Fw: Clairmont Apartment Knock and Talk

For review and signature
ERO and metro lead. We are assisting and looking for criminal cases to prosecute.
Thank you
(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Sent: Mon Oct 18 16:13:15 2010
Subject: Clairmont Apartment Knock and Talk

Here is the draft operational plan for Wednesday's knock and talk with Metro Gang and Fugitive Ops. Between (b)(6), (b)(7)(C) (Fugitive Ops) and (b)(6), (b)(7)(C) (Metro Gang) we've got quite a few possible targets – both ICE fugitives and alien street gang members. I didn't put any specific names on the plan because they are all just possible targets from (b)(6), (b)(7)(C). We won't know exactly who they are until we knock. The plan is be low-key and to limit the operation to the identified apartments. I will have the ASAO on board to prosecute re-entries and any gun cases. Let me know what you think – thanks.

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Senior Special Agent
Homeland Security Investigations
Department of Homeland Security
247 Venture Circle
Nashville, TN 37228
615-566- (b)(6)

4/20/2011

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Thursday, October 07, 2010 5:28 PM
To: (b)(6), (b)(7)(C)
Subject: info from Clairmont

(b)(6), (b)(7), and (b)(7)(C)

The following information was found via use of (b)(7)(D)

(b)(6), (b)(7)(C) (DL: (b)(6), (b)(7)(C)) has (b)(7)(D) in his name in apartments (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (DL: (b)(6), (b)(7)(C)) has (b)(7)(D) in his name in Apt (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) gave me two vehicle tag #s that he says are involved also:

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) said a white male has dropped off several Hispanics near (b)(6) in the complex in this vehicle

The vehicle comes back to a (b)(6), (b)(7)(C) (M/W)

(b)(6), (b)(7)(C)

Vehicle comes back to (b)(6), (b)(7)(C)

Detective (b)(6), (b)(7)(C)
Metro Nashville Police Department
Specialized Investigation Division
Intelligence Section /Gang Unit
SWAT
Office 782- (b)(6)
Mobile 509- (b)(6)

4/20/2011

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 28, 2010 11:40 AM
 To: (b)(6), (b)(7)(C)
 Subject: Re: Gang Arrests

Will be back in office in about 10 min.

Will do.

From: (b)(6), (b)(7)(C)
 To: (b)(6), (b)(7)(C)
 Sent: Thu Oct 28 12:38:57 2010
 Subject: FW: Gang Arrests

(b)(6), (b)(7)(C) - here was the SIR.

(b)(6), (b)(7) - give (b)(6), (b)(7)(C) a call w/ some details..... (b)(7)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 21, 2010 5:14 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: Re: Gang Arrests

Way to go. Thanks for the heads-up.

From: (b)(6), (b)(7)(C)
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Sent: Thu Oct 21 15:11:27 2010
 Subject: Gang Arrests

This may or may not catch some press.

NOTE: that the residents of the apartment complex openly thanked DHS and Metro Agents for taking an active role in protecting the public.

Report Title: Nashville Gang Enforcement Operation

Over the past few weeks, Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Sureños Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

4/20/2011

On October 20, 2010, HSI, ICE/FOT, and Metro Gang Unit conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang unit with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of foreign nationals, specifically street gang members and their associates.

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20

Immigration Status: NTAs (13), B&Bs (3), Reinstatements (3), BIA Appeal Pending (1) released on order of supervision by ERO

Nationalities: Honduras (9), Mexico (7), Guatemala (4)

Gang Members/Associates: 3 - Sureños Locos Criminales (SLC), a SUR 13 clique

Criminal Charges: None

SAS: (b)(7)(n)

Thank you,

(b)(6), (b)(7)(C)

Resident Agent in Charge
US Department of Homeland Security
Homeland Security Investigations (HSI)
612 Hangar Lane, Suite 101
Nashville, TN 37217
O-615-781-(b)(6) /C-615-566-(b)(6) /F-615-781-5472

(b)(6), (b)(7)(C)

4/20/2011

ICE Rule26 00013
-ICE.2014-FOIA-01578.000118

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, October 18, 2010 4:31 PM
To: (b)(6), (b)(7)(C)
Subject: Re: Clairmont Apartment Knock and Talk

Will do. Thank you

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Sent: Mon Oct 18 17:22:12 2010
Subject: RE: Clairmont Apartment Knock and Talk

(b)(6), (b)(7) as you know, just stress safety..... (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, October 18, 2010 3:24 PM
To: (b)(6), (b)(7)(C)
Subject: Fw: Clairmont Apartment Knock and Talk

For review and signature
ERO and metro lead. We are assisting and looking for criminal cases to prosecute.
Thank you

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Sent: Mon Oct 18 16:13:15 2010
Subject: Clairmont Apartment Knock and Talk

Here is the draft operational plan for Wednesday's knock and talk with Metro Gang and Fugitive Ops. Between (b)(6), (b)(7)(C) (Fugitive Ops) and (b)(6), (b)(7)(C) (Metro Gang) we've got quite a few possible targets – both ICE fugitives and alien street gang members. I didn't put any specific names on the plan because they are all just possible targets from (b)(7)(D). We won't know exactly who they are until we knock. The plan is be low-key and to limit the operation to the identified apartments. I will have the ASAO on board to prosecute re-entries and any gun cases. Let me know what you think – thanks.

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Senior Special Agent
Homeland Security Investigations
Department of Homeland Security
247 Venture Circle
Nashville, TN 37228
615-566 (b)(6)

4/20/2011

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 09, 2011 3:28 PM
To: (b)(6), (b)(7)(C)
Subject: RE: (b)(6), (b)(7)(C)

Thank you

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 09, 2011 2:46 PM
To: (b)(6), (b)(7)(C)
Subject: FW: (b)(6), (b)(7)(C)

FYI...relating to Clairmont Apts.

(b)(6), (b)(7)(C)
Special Agent
Homeland Security Investigations
217 Venture Circle
Nashville, TN 37228
615-566- (b)(6)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 09, 2011 1:48 PM
To: (b)(6), (b)(7)(C)
Subject: FW: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (b)(6) (Cell)
615-316- (b)(6) (Office)

x

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 09, 2011 12:59 PM
To: (b)(6), (b)(7)(C)
Subject: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Deportation Officer
ICE/ERO FUGOPS
Nashville, TN
504-329 (b)(6)

4/20/2011

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Friday, November 05, 2010 10:00 AM
 To: 'Ramsaur, Jimmie Lynn (USATNM)'
 Subject: Summary of Gang op at Apartment complex

Over the past few weeks, Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F)

(b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

On October 20, 2010, HSI, ICE/FOT, and Metro Gang Unit conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang unit with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of foreign nationals, specifically street gang members and their associates.

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20
 Immigration Status: NTAs (13), B&Os (3), Reinstatements (3), BIA Appeal Pending (1)
 released on order of supervision by ERO
 Nationalities: Honduras (9), Mexico (7), Guatemala (4)
 Gang Members/Associates: 3 - Surenos Locos Criminales (SLC), a SUR 13 clique
 Criminal Charges: None

Thank you,

(b)(6), (b)(7)(C)

Resident Agent in Charge
 US Department of Homeland Security
 Homeland Security Investigations (HSI)
 612 Hangar Lane, Suite 101
 Nashville, TN 37217
 O-615-781 (b)(6) C-615-566 (b)(6) /F-615-781-5472

(b)(6)

4/20/2011

ICE Rule 26 00016
 ICE-2014-FOIA-01578.000121

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, November 18, 2010 11:58 AM
 To: (b)(6), (b)(7)(C)
 Cc:
 Subject: RE: Preservation Notice - Clairmont Apartments, Nashville, TN
 Attachments: RAC Nashville OPS Plan for Gang OP.pdf; RAC Nashville ROI for Gang Operation.pdf

(b)(6), (b)(7)

Here ya go...sorry for the delay...

From: (b)(6), (b)(7)(C)
 Sent: Tuesday, November 16, 2010 9:15 AM
 To: (b)(6), (b)(7)(C)
 Subject: FW: Preservation Notice - Clairmont Apartments, Nashville, TN

(b)(6), (b)(7) pls give me a list of everyone at the operation that day, a signed copy of the ops plan and the roi. You have probably already done it, but pls make sure that all employees are made aware of the preservation notice.....(b)(6), (b)(7)

From: (b)(6), (b)(7)(C)
 Sent: Monday, November 15, 2010 8:54 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: Re: Preservation Notice - Clairmont Apartments, Nashville, TN

Thank you for the email. M (b)(6), (b)(7)(C) Our ASAC for TN, (b)(6), (b)(7)(C) (cc'd), will serve as the POC for HSI. He'll ensure appropriate HSI personnel in Nashville receive this notice and will write back to you with the employees' names.

Best wishes,

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Sent: Mon Nov 15 15:32:04 2010
 Subject: Preservation Notice - Clairmont Apartments, Nashville, TN

Gentlemen,

Attached is a Preservation Notice regarding a law enforcement operation occurring at or near the Clairmont Apartments in Nashville, TN. We have been put on notice by the ACLU that this incident may become the subject of future litigation. Accordingly, please disseminate the attached preservation notice to any and all employees that may have information regarding this incident.

Additionally, I need you to 1) please advise me who the employees are, in your respective areas, that may have been involved or have information regarding this matter and 2) please confirm that they have received the

4/20/2011

attached notice. I will keep this information for our records to show compliance with our obligation to preserve the evidence in this matter.

Thanks.

(b)(6), (b)(7)(C)
Associate Legal Advisor
Office of the Principal Legal Advisor
Commercial and Administrative Law Division
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
(214) 905- (b)(6)

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delete it from your computer.~~

4/20/2011

ICE_Rule26_00018
ICE-2014-FOIA-01578.000423

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Thursday, October 28, 2010 11:37 AM
To: (b)(6), (b)(7)(C)
Subject: Re: heads up

Perfect.

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Sent: Thu Oct 28 12:36:33 2010
Subject: RE: heads up

(b)(6), (b)(7)(C) - not aware of the press conference. I will flip you the SIR that (b)(6), (b)(7)(C) did on the operation. The targets were gang related... (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Thursday, October 28, 2010 11:33 AM
To: (b)(6), (b)(7)(C)
Subject: FW: heads up
Importance: High

(b)(6), (b)(7)(C) - are you aware of the press conference below? Please let me know if I should be wearing my Kevlar today. No calls on this yet. Thanks.

(b)(6), (b)(7)(C)
Spokesman
Immigration and Customs Enforcement
1250 Poydras St., Suite 2200
New Orleans, Louisiana 70113
504-310- (b)(6)

From: (b)(6) On Behalf Of Loller, Travis
Sent: Thursday, October 28, 2010 10:05 AM
To: (b)(6), (b)(7)(C)
Subject: heads up

Hey (b)(6), (b)(7)(C)

Haven't heard from you about my tour!

Also, wanted to give you a heads up that there will be a press conference today about an ICE raid that took place on Oct. 20 at the Clairmont Apartments in Nashville (not sure of the spelling). I'm not sure what all the allegations are, but I know that local immigrants rights activists and attorneys think that the raid was not carried out properly and that ICE agents violated people's rights.

I don't have any specific questions yet because I haven't heard the specific allegations, but I wanted to give you a heads up that this is happening today and I'm hoping ICE will have a statement about it. You will likely be getting inquiries from other media as well.

4/20/2011

I'll get back to you later today.

Thanks!

Travis Loller

Associated Press, Nashville

615-373-

800-453- (b)(6) (within Tennessee)

615-484- (mobile)

"There are only two forces that can carry light to all corners of the globe -- only two -- the sun in the heavens and The Associated Press down here."

-- Mark Twain

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4/20/2011

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 21, 2010 5:11 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: Gang Arrests
 Attachments: (b)(7)(e) Nashville Gang Ops.hlm

This may or may not catch some press.

NOTE: that the residents of the apartment complex openly thanked DHS and Metro Agents for taking an active role in protecting the public.

Report Title: Nashville Gang Enforcement Operation

Over the past few weeks, Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

On October 20, 2010, HSI, ICE/FOT, and Metro Gang Unit conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang unit with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of foreign nationals, specifically street gang members and their associates.

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20
 Immigration Status: NTAs (13), B&Bs (3), Reinstatements (3), BIA Appeal Pending (1)-
 released on order of supervision by ERO
 Nationalities: Honduras (9), Mexico (7), Guatemala (4)
 Gang Members/Associates: 3 - Surenos Locos Criminales (SLC), a SUR 13 clique
 Criminal Charges: None
 SAS: (b)(7)(e)

Thank you,

(b)(6), (b)(7)(C)

Resident Agent in Charge
 US Department of Homeland Security
 Homeland Security Investigations (HSI)
 612 Hangar Lane, Suite 101
 Nashville, TN 37217
 O-615-781 (b)(6) C-615-566 (b)(6) F-615-781-5472

(b)(6)

4/20/2011

ICE Rule 26 00021
 ICE-2014-FOIA-01578.000126



U.S. Immigration
and Customs
Enforcement

ENFORCEMENT OPERATION PLAN

ICE Office: RAC Nashville, Tennessee	Case Number: (b)(7)E
Case Agent: (b)(6), (b)(7)(C)	Contact Number(s): 615-566- (b)(6)
ICE Supervisor: (b)(6), (b)(7)(C)	Contact Number(s): 615-533- (b)(6)
Title 21 Investigation: ☐ Yes (IF YES, DEA NOTIFICATION PAGES MUST BE COMPLETED) ☒ No (IF NO, DO NOT SUBMIT DEA NOTIFICATION PAGES)	
Operation Type: ☐ Controlled Delivery ☐ Search Warrant Execution ☐ Arrest Warrant Execution ☐ Flash Roll	☐ Surveillance ☐ U/C Meeting ☒ Other Knock and Talk
Violations/Charges: TN State Violations / 8 USC 1326 / 18 USC 922(g)	
Date/Time of Operation: 10/20/2010 (b)(7)E hours	
Location of Operation: Clairmont Apartments, 1019 Patricia Drive, Nashville, TN 37217	
Briefing Location: ICE Fugitive Operations Team Office, Nashville, TN	
Staging Location: ICE Fugitive Operations Team Office, Nashville, TN	
Address of Target Location: Clairmont Apartments, 1019 Patricia Drive, Nashville, TN	
Type of Premises: Apartment Complex	
Description of Premises: Multi-unit, two story, apartment complex	
Conveyance Type: N/A	
Type/Quantity of Contraband Involved: N/A	
Name of AUSA Assigned: John Webb	Office: Middle District of Tennessee
Telephone Number: 615-735- (b)(6)	Blackberry/Cell Number: N/A

Summary of Investigation (Provide a brief summary of the investigation)

Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(D) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(D)

(b)(6), (b)(7)(C), (b)(7)(D) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Sureños Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

Operational Objectives (Provide a brief summary of the operational objectives)

HSI, ICE/FOT, and Metro Gang Unit will conduct knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. Metro Gang will make arrests for any state violations discovered during the knock and talk operation. HSI, along with ICE/FOT, will assist Metro Gang with the identification of any foreign nationals at the residences. HSI and ICE/FOT may also make administrative arrests of foreign nationals, specifically street gang members and their associates.

SUBJECT INFORMATION (Provide a brief summary of the subject information)

Name of Suspect: N/A	Date of Birth (DOB): N/A
Address of Suspect: N/A	
Physical Description: N/A	
Vehicle(s): N/A	
History of Violence or Weapons: N/A	
Prior Criminal History: N/A	
☐ US Citizen	☒ Non-US Citizen
Immigration Status and A-Number (if known): N/A	
Other Pertinent Information: N/A	
Photo Available	☐ Yes ☒ No

UNDERCOVER AGENT (After Additional Information from the UIC)		
Primary UIC: No Undercover		Secondary UIC: No Undercover
☐ Other		
Name of UIC: N/A		
Physical Description: N/A		
Pager/Cellular Phone Number(s): N/A		
UIC Vehicle: N/A		
Distress Code Audio: N/A Visual:	Arrest Signal Audio: N/A Visual:	Radio Channels Primary: (b)(7)E Secondary:
Mobile Phone Numbers: Detective (b)(6), (b)(7)(C) Metro Gang Unit 615-509- (b)(6)		
Sector Phone Number: 1-800-973- (b)(7)E		
Local Police Notified? ☒ Yes ☐ No	Name of P.D.: Metropolitan Nashville Police Department	P.D. Location & Phone: 615-509-3742
Air Support To Be Utilized: ☐ Yes ☒ No		
Type of Aircraft: N/A		
Air Support Instructions: N/A		
Nearest Hospital: Name: Vanderbilt Medical Center Street: 1211 Medical Center Drive City, St: Nashville, TN 37232 Phone: 615-322-5000		

PERSONNEL ASSIGNMENTS		
Assignments: (b)(7)e		
Name:	Call Sign:	Assignments:
1. (b)(6), (b)(7)(C)	1. (b)(7)e	
2. (b)(6), (b)(7)(C)	2. (b)(7)e	
3. (b)(6), (b)(7)(C)	3. (b)(7)e	
4. (b)(6), (b)(7)(C)	4. (b)(7)e	
5. (b)(6), (b)(7)(C)	5. (b)(7)e	
6. (b)(6), (b)(7)(C)	6. (b)(7)e	
7. (b)(6), (b)(7)(C)	7. (b)(7)e	
8. ICE/Fugitive Operations Team -		
(b)(7)e		
9. Metro Nashville Police Gang		
Unit - (b)(7)e		
10.		
11.		
Prisoner Processing Location: 247 Venture Circle, Nashville, TN		
Evidence To Be Transported: N/A		
Equipment Required: Identifiable ICE/ POLICE clothing, Weapon, Flashlight		
Attire: Rough Duty		
Hazards: Apartments of suspected criminal street gang members - possibly weapons and/or animals		

ICE Enforcement Operation Plan

Report Assignments	
Name:	Assignment:
(b)(6), (b)(7)(C)	ROI
	Select One
	Select One
	Select One
	Select One
	Select One

Additional Information: HSI, ICE/FOT, and Metro Gang will brief at the ICE/FOT office prior to the knock and talk operation at the Clairmont Apartments. (b)(6), (b)(7)(C) teams, each consisting of (b)(6), (b)(7)(C) HSI agents, (b)(6), (b)(7)(C) ICE/FOT officers, and (b)(6), (b)(7)(C) Metro Gang detectives, will conduct knock and talks on four apartments in the complex. Metro Gang will make arrests for violations of state law discovered during the knock and talk operation. HSI and ICE/FOT may make administrative arrests of foreign national gang members.

Any individuals administratively arrested by HSI and/or ICE/FOT will be transported to the Ventura Circle office for processing. HSI will handle any federal criminal prosecutions relating to the operation.

Approval(s): (if required)

	(b)(6), (b)(7)(C)	Select One	(b)(6), (b)(7)(C)
Signature		Signature/Title	
			1/ASAC 10/18/10
cc: Case File Sector DEA (if applicable) Title 21 Operation Plan Lco (if applicable)			

iceeoplan.doc

3/16/10

5

ICE Rule 26 00026
— ICE 2014 FOIA 01578.000131

ICE Significant Incident Report

Submitted Date and Time of Report: 10/21/2010 1805 EST

Incident Date: 10/20/2010 Incident Time: (b)(7) Incident Location: Nashville, TN
ICE Component: Investigations Division: Division 2 - Financial, Narcotics & Public Safety Division Area: NGU - ICE National Gang Unit (NGU)
Case Number: (b)(7) Office: NV - NASHVILLE, TN - RAC Lead Agency: B - DHS / ICE
SEN Incident Number: Initial/Follow-Up: Initial Event Status: Routine
Related SEN Number: Related Case Number: —NV— SEACATS Number: (b)(7)
Intel Number: ENFORCE Number: (b)(7)

Employee	Operational	Security	Other
☐ Shots Fired At Employee	☐ Air/Marine Incidents	☐ National Security Interest	☐ Escape
☐ Shots Fired By Employee	☐ Controlled Delivery	☐ Facility Disturbance	☐ Suicide Attempt
☐ Employee Assaulted	☐ Significant Seizure	☐ Terrorism Related	☐ Hunger Strike
☐ Employee Death	☒ Significant Arrest	☐ Bomb Threat/Suspicious Activity	☒ Media Interest
☐ Employee Injured	☐ Rescue	☐ Foreign Military/Police Incursion	☐ Alien Injury/Death
☐ Employee Arrested	☐ Weapon Violations	☐ WMD/HAZMAT	☐ Vehicle Incidents
☐ Firearms Discharge to Include Unintentional Discharge	☐ Other Agency Interest	☐ Demonstrations	☐ Other
☐ Use of Baton or other Impact Weapon		☐ JTTF	☐ Predator
☐ Use of OC Spray or other Chemical Agents			
☐ Other Use of Force			
☐ Loss or Theft of Firearm or Body Armor			

Principal Subject: Person Last Name: (b)(6), (b)(7)(C) First Name: (b)(6), (b)(7)(C) Alien ID:
Date of Birth: (b)(6), (b)(7)(C) Country of Birth: Honduras Citizenship: Honduras

Narrative

Report Title: Nashville Gang Enforcement Operation

Over the past few weeks, Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F)
(b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Sureños Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

On October 20, 2010, HSI, ICE/FOT, and Metro Gang Unit conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their

file://C:\ (b)(7) 4/20/2011

ICE Rule 26 00027
—ICE.2014-FOIA-01578.000132

associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang unit with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of foreign nationals, specifically street gang members and their associates.

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20
Immigration Status: NTAs (13), B&Bs (3), Reinstatements (3), BIA Appeal Pending (1)
released on order of supervision by ERO
Nationalities: Honduras (9), Mexico (7), Guatemala (4)
Gang Members/Associates: 3 - Sureños Locos Criminales (SLC), a SUR 13 clique
Criminal Charges: None
SAS: (b)(7)(C)

Violations of Law: TN State Violations / 8 USC 1326 / 18 USC 922(g)

Action Taken:

Other Agencies Notified:

Name	Agency	Phone	Date	Time
none				

Injuries: No	Injuries (Names and Extent of
Fatalities: No	Injury):
Damage: No	

Reported to ICE Operations Center via Phone:

Reported By: (b)(6), (b)(7)(C)	Phone: 61578 (b)(6)	Cell/Pager: 615568 (b)(6)
Supervisor: (b)(6), (b)(7)(C)	Phone: (901) 312 (b)(6)	Cell/Pager: 901558 (b)(6)

file://C: (b)(7)(C) 4/20/2011

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REQUESTED BY: (b)(6), (b)(7)(C)

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04/21/11

TECS II - CASE RECORD

PAGE 1

CASE NUMBER: (b)(7)(C) OPEN STATUS DATE: 10132010
CASE TITLE: OPERATION COMMUNITY SHIELD FY-2011

CASE OFFICER: (b)(6), (b)(7)(C) SPECIAL AGENT
SUPERVR: (b)(6), (b)(7)(C) OI GRP SUPERVISOR
OFFICE : NV NASHVILLE, TN - RAC CASE OFFICER PHONE #: 615-736-(b)(6)

CATEGORY: 16 GENERAL ALIEN INVEST SUB-CATEGORY: J GENERAL ALIEN INVEST
SOURCE : R ICE - INVESTIGATIONS JTTF: N FORGN LANG REQR: Y SP
GROUP : PROGRAM: YSO GANGS X FOR MORE:
PROSECUTION STATUS: N DATE: 00000000
TITLE 21: DATE: 00000000
OCDETF: N DATE: 00000000 CASE #: USCS SPON OCDETF:
DATE OF FIRST COMMERCIAL ENTRY: 00000000 SIGNIFICANT IMPACT: N QRY NOT: 1
JUDICIAL DISTRICT: 75 TENNESSEE, MIDDLE CERT. UNDRCVR : N

COUNTRY CODE: ORIGIN US X FOR MORE: NATIONAL SECURITY RELATED: N
TRANSIT X FOR MORE: DISCRETIONARY CASE : Y
DESTINATION X FOR MORE: SPECIAL INTEREST ALIEN : N
ADDITIONAL DISTRIBUTION: X FOR MORE: DEATH/VIOLENCE : 01

>>>> SUMMARY/DESCRIPTION <<<<

Homeland Security Investigations (HSI) has partnered with the Metropolitan Nashville Police Gang Unit (Metro Gang) and Enforcement and Removal Operations (ERO), Fugitive Operations Team, to conduct criminal investigations and other enforcement operations against transnational criminal street gangs in furtherance of Operation Community Shield. HSI, ERO, and Metro Gang are working together to identify violent, foreign national street gang members and their associates in the Nashville, Tennessee area. HSI will seek criminal prosecution of alien gang members, when applicable, and/or their removal from the United States. This case is opened to document the criminal and administrative arrests of transnational criminal street gang members in the Middle District of Tennessee.

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DEPARTMENT OF HOMELAND SECURITY ICE		TECS ACCESS CODE (b)(7)e	
REPORT OF INVESTIGATION		PAGE 1	
TITLE: OPERATION COMMUNITY SHIELD FY-2011		CASE NUMBER (b)(7)e	
CASE STATUS: INIT RPT			
REPORT DATE 102210	DATE ASSIGNED 101310	PROGRAM CODE (b)(7)e	REPORT NO. 001
RELATED CASE NUMBERS:			
COLLATERAL REQ:			
TYPE OF REPORT: INVESTIGATIVE FINDINGS			
TOPIC: KNOCK AND TALK OPERATION - CLAIRMONT APARTMENTS			

SYNOPSIS:

Homeland Security Investigations (HSI) has partnered with the Metropolitan Nashville Police Gang Unit (Metro Gang) and the ICE Fugitive Operations Team (FOT) to conduct criminal investigations and other enforcement operations against transnational criminal street gangs in furtherance of Operation Community Shield. HSI, ICE/FOT, and Metro Gang are working together to identify violent, foreign national street gang members and their associates in the Nashville, Tennessee area. HSI will seek criminal prosecution of alien gang members, when applicable, and/or their removal from the United States. This case is opened to document the criminal and administrative arrests of transnational criminal street gang members in the Middle District of Tennessee.

This Report of Investigation (ROI) documents a knock and talk operation conducted with ICE/FOT and Metro Gang at the Clairmont Apartments, 1019 Patricia Drive, Nashville, Tennessee, on October 20, 2010.

DISTRIBUTION: (b)(7)e	SIGNATURE: (b)(6), (b)(7)(C)	
	(b)(6), (b)(7)(C) SENIOR SPEC AGENT	
	APPROVED: (b)(6), (b)(7)(C)	
	(b)(6), (b)(7)(C) GRP SUPERVISOR	
ORIGIN OFFICE: NV NASHVILLE, TN - RAC		TELEPHONE: 615 736 (b)(6)
		TYPIST: (b)(6), (b)(7)(C)

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DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 2
REPORT OF INVESTIGATION CONTINUATION	CASE NUMBER (b)(7)(D)
	REPORT NUMBER: 001

DETAILS OF INVESTIGATION:

Over the past few weeks, the Metropolitan Nashville Police Department (Metro) has received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE Fugitive Operations Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young

Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F)

(b)(6), (b)(7)(C), (b)(7)(F)

HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

On October 20, 2010, HSI, ICE/FOT, and Metro Gang conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of twenty (20) individuals for immigration violations. Three of the individuals were identified as members / associates of the Surenos Locos Criminales. They were (b)(6), (b)(7)(C), (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) and (b)(6), (b)(7)(C)

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20

Gang Members / Associates: 3 Surenos Locos Criminales (SLC), a SUR 13 clique

Processing Disposition: NTAs (13), B&Bs (3), Reinstatements (3),
BIA Appeal Pending (1) Released on an order of supervision by ICE/FOT

Nationalities: Honduras (9), Mexico (7), Guatemala (4)

SAS: (b)(7)(D)

Investigation continues.

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ERO

Documents

REDACTED

1 of 2

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Friday, October 15, 2010 3:31 PM
To: (b)(6), (b)(7)(C)
Cc:
Subject: NASHVILLE METRO PD SUPPORT
Importance: High
Follow Up Flag: Follow up
Flag Status: Completed
Attachments: Gang G-166 - 10-15-2010.doc

Hello (b)(6), (b)(7)(C)

We may be supporting Nashville Metro PD next week on several knock and talks that they will be conducting. Attached, please find the related G-166 for informational purposes. I will let you know more on Monday.

Thank You,

(b)(6), (b)(7)(C)

*Supervisor Fugitive Operations
DHS/ICE/ERO
New Orleans Field Office
Nashville Sub-Office
(615) 316- desk
(615) 642- (b)(6) Blackberry*

5/4/2011

ICE Rule 26 00033
ICE 2014 FOIA 04578.000138

MEMORANDUM OF INVESTIGATION

File Number	Title:	Control Office
Gang Investigation Community Shield Case (b)(7)(e)	Nashville Hispanic Street Gangs	ICE/NVL FUGOPS

Background: On several occasions, Fugitive Operations Team (FOT) officers have located and arrested ICE fugitives and criminal aliens at or near Claiborne Apartments at (b)(6), (b)(7)(C) Nashville, TN. This apt complex has become bank owned and a new management company, Greystar took over managing the property within the last year. After this mgmt. transition, FOT officers were having some difficulty obtaining cooperation with onsite leasing staff regarding possible ICE fugitives or criminal aliens living or being present at the property. FOT officers continue to receive several fugitive cases with last known addresses or possible addresses located at this apt complex. Information suggests some of the leasing staff were sympathetic to illegal immigration and had direct ties to illegal immigrants. This property is also known to have a past and present gang, narcotic, and other criminal activity. The property is fenced in except for the entrance and is directly across the street from Glenview Elementary School. Other apt complexes adjacent to this property on Thompson Lane are also known for the same criminal activity and been subject to prior successful local and federal investigations involving an MS-13 clique (Thompson Place Lokotes).

Recently, FOT officers were approached by (b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(C)

(b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(C)

FOT officers then began to conduct surveillance around the complex and research specific apts. This research revealed several possible occupants are either criminal aliens, prior removals, or have outstanding orders of removal from the United States. Investigation efforts also suggest several apts are used as stash houses for concealing weapons/firearms, used in narcotic sales, or possible alien smuggling.

Information was also obtained regarding ICE fugitives being sought by FOT officers that recently switched apts from (b)(6), (b)(7)(C) After FOT officers arrested two criminal aliens from this apt (b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(C)

(b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(C)

After being informed of these threats, FOT officers contacted Nashville Metro Police Gang Unit Detectives to establish information sharing and develop a plan of action. Over the past few weeks, Gang Unit Detectives, FOT officers, and HS-I Special Agents have met on multiple occasions (b)(7)(e), (b)(7)(f)

(b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(C)

(b)(7)(e), (b)(7)(f) to obtain information and possibly identify the persons responsible for the threats, criminal activity being conducted at the apt complex, and/or active gang members in the area. Metro Gang Unit Detectives have conducted multiple surveillance operations and made visible presence visits to the area.

Investigation efforts by all law enforcement agencies involved (b)(7)(e), (b)(7)(f) resulted in the following information on gang members and criminal activity in the area: Active street gangs SLC (Surenos Locos Criminales), and 7OP (Seven Oaks Park). SLC is believed to be a SUR 13 clique with one or both possibly being MS-13 affiliated. Although SUR13 and Mara Salvatrucha cooperation is abnormal historically, multiple known SLC gang members are from Honduras.

1. Two individuals are thought to be responsible for the threats and may or may not be gang affiliated to an MS-13 clique. These individuals known only as (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) have been seen at the property and are possibly associated with (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) also may reside at (b)(6), (b)(7)(C) Murfreesboro Rd, a short distance from Claiborne apts. Intelligence suggests that they are illegal aliens from Honduras. Both are primarily known to commit strong arm robbery, assaults, and other violent crimes against other illegal immigrants in the surrounding area (most unreported). They frequent billiard club/bar "El Uno" on Millwood road, one block from Claiborne apts. Both are known to carry handguns and to be drug users.
2. (b)(6), (b)(7)(C) a possible Sur 13 gang member, is believed to be residing in (b)(6), (b)(7)(C) with at least six other individuals all believed to be illegal aliens previously removed from the United States. (b)(6), (b)(7)(C). Possible criminal activity involving narcotics and home invasion robbery (illegal alien contractors), and Burglary.
3. (b)(6), (b)(7)(C) along with his brother (b)(6), (b)(7)(C) are believed to be residing with USC spouse/girlfriend (b)(6), (b)(7)(C) at (b)(6), (b)(7)(C) Nashville, TN. Both are said to be illegal aliens from Honduras previously removed from the United States. Vehicle associated is a (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) is described as (b)(6), (b)(7)(C). Criminal activity includes narcotics sales, home invasion robbery (illegal alien contractors), and Burglary. Frequent billiards club/bar "El Uno."
4. (b)(6), (b)(7)(C) is believed to be related (cousin) of (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) is known as the "go to" for firearms including assault weapons. Possibly illegal alien from Honduras residing at apt complex at (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and a (b)(6), (b)(7)(C) were previously listed at (b)(6), (b)(7)(C).
5. (b)(6), (b)(7)(C) is said to be the main narcotics connection in the area and frequents/possibly operates out of El Uno. (b)(6), (b)(7)(C) is described as (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) is allegedly associated with a (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) possibly in (b)(6), (b)(7)(C). She has multiple apts in the complex associated with her name. (b)(6), (b)(7)(C) (Natz USC) appears to be related to (b)(6), (b)(7)(C) and has multiple apts associated to him at the complex via utility information (b)(6), (b)(7)(C).

The following information was found via (b)(7)(e) (b)(6), (b)(7)(C) (DL# (b)(6), (b)(7)(C) has (b)(7)(e) in apartments (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (DL# (b)(6), (b)(7)(C) has NES in his name in Apt (b)(6), (b)(7)(C).

Two vehicle tag #s that he says are involved also:

(b)(6), (b)(7)(C) -intel suggests a white male has dropped off several Hispanics near (b)(6), (b)(7)(C) in the complex in this vehicle. The vehicle comes back to a (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) Vehicle comes back to (b)(6), (b)(7)(C) -mother of (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) aka (b)(6), (b)(7)(C) -SLC gang member and ICE Fugitive - (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) arrested 10/14/10 as ICE fugitive.

Apartments in question:

(b)(6), (b)(7)(C)

HS-I Special Agents and FOT officers are planning to assist Nashville Metro Gang Unit in the near future with a series of "knock and talks" on some or all of these apartments to interpret and interview as needed.

Additional:

Liaisons established with the Metro Gang Unit have enabled HSI to initiate a Community Shield case involving violent street gangs in middle Tennessee area of operation, as well as, assist FOT officers in identifying multiple gang members that are ICE fugitives with outstanding orders of removal from the United States. **Community Shield Case** (b)(7)(F)

FY11 ARRESTS TO DATE: 10/12/10, (b)(6), (b)(7)(C) Mexico. (b)(6), (b)(7)(C) is a known Brown Pride gang member with a violent criminal history including homicide related and other assault and drug charges as a juvenile. (b)(6), (b)(7)(C) was previously removed from the U.S. to Mexico in 2006 and illegally re-entered. FOT officers and HSI Special Agents assisted Metro Gang Detectives in identifying (b)(6), (b)(7)(C) as an illegal alien after a search warrant was executed by Nashville Metro SWAT and Gang Unit involving illegal narcotic activity at (b)(6), (b)(7)(C) Nashville, TN. HSI Special Agents presented (b)(6), (b)(7)(C) for prosecution in the middle District of Tennessee for 8 USC 1326. (b)(6), (b)(7)(C) arrest and prosecution is a direct result of cooperation with FOT officers, HSI Special Agents, and the Nashville Metro Gang Unit.

ICE Fugitives identified: FOT officers were able to identify (b)(6), (b)(7)(C) aka (b)(6), (b)(7)(C) a known SLC gang member. Metro Gang Unit Detectives aware of (b)(6), (b)(7)(C) recent gang tagging activity secured a local graffiti search warrant on (b)(6), (b)(7)(C) residence, (b)(6), (b)(7)(C) Antioch, TN on 10/14/2010. (b)(6), (b)(7)(C) was not immediately located, and FOT officers were called to assist in interviewing (b)(6), (b)(7)(C) (Honduras). (b)(6), (b)(7)(C) the mother of (b)(6), (b)(7)(C) was determined to be illegally present in the U.S. and an ICE fugitive. FOT officers arrested (b)(6), (b)(7)(C) and processed her as an ICE fugitive. As a result of the search warrant, it was revealed that (b)(6), (b)(7)(C) is also an ICE fugitive with outstanding order of removal under (b)(6), (b)(7)(C). Gang Unit Detectives anticipate locating (b)(6), (b)(7)(C) in the near future for local charges and will immediately notify FOT officers.

Deportation Officer

NFL/TN Fugitive Operations

(b)(6), (b)(7)(C)

Date

10/15/2010

Form G-166C (7-1-83)

ICE Rule 26 00036
ICE 2014 FOIA 01578 000141



U.S. Immigration
and Customs
Enforcement

ENFORCEMENT OPERATION PLAN

ICE Office: RAC Nashville, Tennessee	Case Number: (b)(7)D
Case Agent: (b)(6), (b)(7)(C)	Contact Number(s): 615-566 (b)(6)
ICE Supervisor: (b)(6), (b)(7)(C)	Contact Number(s): 615-533 (b)(6)
Title 21 Investigation: ☐ Yes (IF YES, DEA NOTIFICATION PAGES MUST BE COMPLETED) ☒ No (IF NO, DO NOT SUBMIT DEA NOTIFICATION PAGES)	
Operation Type: ☐ Controlled Delivery ☐ Search Warrant Execution ☐ Arrest Warrant Execution ☐ Flash Roll	☐ Surveillance ☐ U/C Meeting ☒ Other Knock and Talk
Violations/Charges: TN State Violations / 8 USC 1326 / 18 USC 922(g)	
Date/Time of Operation: 10/20/2010 1700 hours	
Location of Operation: Clairmont Apartments, (b)(6), (b)(7)(C) Nashville, TN 37217	
Briefing Location: ICE Fugitive Operations Team Office, Nashville, TN	
Staging Location: ICE Fugitive Operations Team Office, Nashville, TN	
Address of Target Location: Clairmont Apartments, (b)(6), (b)(7)(C) Nashville, TN	
Type of Premises: Apartment Complex	
Description of Premises: Multi-unit, two story, apartment complex	
Conveyance Type: N/A	
Type/Quantity of Contraband Involved: N/A	
Name of AUSA Assigned: John Webb	Office: Middle District of Tennessee
Telephone Number: 615-736 (b)(6)	Blackberry/Cell Number: N/A

Summary of Investigation: (provide a brief description of the investigation)

Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, (b)(6), (b)(7)(C) Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(7)(C), (b)(7)(F), (b)(6), (b)(7)(C) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F)

(b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

Operational Objectives: (detail the action planned and the anticipated outcome)

HSI, ICE/FOT, and Metro Gang Unit will conduct knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. Metro Gang will make arrests for any state violations discovered during the knock and talk operation. HSI, along with ICE/FOT, will assist Metro Gang with the identification of any foreign nationals at the residences. HSI and ICE/FOT may also make administrative arrests of foreign nationals, specifically street gang members and their associates.

SUSPECT INFORMATION: (Attach additional information if more than one suspect)

Name of Suspect: N/A		Date of Birth (DOB): N/A
Address of Suspect: N/A		
Physical Description: N/A		
Vehicle(s): N/A		
History of Violence or Weapons: N/A		
Prior Criminal History: N/A		
☐ US Citizen	☒ Non-US Citizen	
Immigration Status and A-Number (if known): N/A		
Other Pertinent Information: N/A		
Photo Available	☐ Yes ☒ No	

UNDERCOVER AGENT: (Attach additional information if more than two U/C)

Primary U/C: No Undercover

Secondary U/C: No Undercover

☐ Other:

Name of U/C: N/A

Physical Description: N/A

Pager/Cellular Phone Number(s): N/A

U/C Vehicle: N/A

Distress Code

Arrest Signal

Radio Channels

Audio: N/A

Audio: N/A

Primary: (b)(7)E

Visual:

Visual:

Secondary:

Mobile Phone Numbers:

Detective (b)(6), (b)(7)(C) Metro Gang Unit

615-509-(b)(6)

Sector Phone Number: 1-800-973-(b)(7)E

Local Police Notified?

Name of P.D.:

P.D. Location & Phone:

☒ YesMetropolitan Nashville Police
Department

615-509-3742

☐ NoAir Support To Be Utilized: ☐ Yes ☒ No

Type of Aircraft: N/A

Air Support Instructions: N/A

Nearest Hospital:

Name: Vanderbilt Medical Center
Street: 1211 Medical Center Drive
City, St: Nashville, TN 37232
Phone: 615-322-5000

PERSONNEL ASSIGNMENTS:

Assignments:

(b)(7)e

	Name:	Call Sign:	Assignments:
1.	(b)(6), (b)(7)(C)	(b)(7)e	
2.			
3.			
4.			
5.			
6.			
7.			
8. ICE/Fugitive Operations Team - (b)(7)e			
9. Metro Nashville Police Gang Unit - (b)(7)e			
10.			
11.			
Prisoner Processing Location: 247 Venture Circle, Nashville, TN			
Evidence To Be Transported: N/A			
Equipment Required: Identifiable ICE/ POLICE clothing, Weapon, Flashlight			
Attire: Rough Duty			
Hazards: Apartments of suspected criminal street gang members - possibly weapons and/or animals.			

Report Assignments	
Name:	Assignment:
(b)(6), (b)(7)(C)	ROI
	Select One
	Select One
	Select One
	Select One
	Select One
Additional Information: HSI, ICE/FOT, and Metro Gang will brief at the ICE/FOT office prior to the knock and talk operation at the Clairmont Apartments. (b)(7)(e) each consisting of (b)(7)(e) HSI agents, (b)(7)(e) ICE/FOT officers, and (b)(7)(e) Metro Gang detectives, will conduct knock and talks on four apartments in the complex. Metro Gang will make arrests for violations of state law discovered during the knock and talk operation. HSI and ICE/FOT may make administrative arrests of foreign national gang members. Any individuals administratively arrested by HSI and/or ICE/FOT will be transported to the Venture Circle office for processing. HSI will handle any federal criminal prosecutions relating to the operation.	
Approval(s): (if required)	
Signature/Title Select One Signature/Title	
cc: Case File Sector DEA (if applicable) Title 21 Operation Plan Log (if applicable)	

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)(e)
Operation Date(s): 10/20/2010 (b)(7)(e)
Report Date: 10/19/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at (b)(7)(e) hours at the Nashville FOT Office. All members of the FOT have agreed to change their shift from (b)(7)(e) for participation in operation.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered once Nashville Metro PD has secured consent to enter a residence. NVL Fug/Ops will assist with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams that include HSI and Nashville Metro PD (see HSI Op Plan) during the briefing that will be held on 10/20/10. All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

Juvenile Issues

Due to the time and location, it is not anticipated that any juveniles will be encountered.

If a juvenile is apprehended, the primary or secondary juvenile coordinator will be contacted for placement.

Detainee Movement

Existing detention vans will be utilized to facilitate transport from arrest site to 247 Venture Circle, Nashville, TN for processing and to Davidson County Jail for detention.

Alien Property

Alien Property will not be received by ERO unless it is properly tagged and documented. Per New Orleans Field Office policy, any property not going with detained aliens will be

retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher Information for Detail

None

Contact Numbers

Address:
ICE RAC/Nashville
247 Venture Circle
Nashville, TN

Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(5), (b)(7)(C)	DO	615-642-	
(b)(5), (b)(7)(C)	DO	615-642-	
(b)(5), (b)(7)(C)	IEA	615-416-	
(b)(5), (b)(7)(C)	DO	504-329-	
(b)(5), (b)(7)(C)	DO	615-642-	
(b)(5), (b)(7)(C)	SDDO	615-642-	

APPROVING OFFICIAL



Philip T. Miller
Field Office Director
New Orleans Field Office

OCT 19 2010

Date



ICE Anticipated Operational Activity / Events

Enforcement and Removal Operations (ERO)*Week of October 17, 2010:*

New Orleans Field Office

- Joint Gang Operation (no specific name)
 - 10/20/2010
 - Nashville, TN.
 - Gang Members/affiliated individuals
 - 4 targeted apartments at a large complex
 - Joint Op involving the Nashville Metro PD Gang Unit, Nashville HSI and FOT
 - Lead Agency is Nashville Metro PD
 - No Anticipated Media Impact
 - Point of Contact ERO: (b)(6), (b)(7)(C), SDDO FOT (615) 316- (b)(6)

Pre-Operation Synopsis:

Metropolitan Nashville Police (Metro) received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(c) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(c), (b)(7)(f) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

Post Operation Results:

On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Lane (Claiborne Apartments) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro PD Gang Unit. This enforcement operation resulted in the arrest of twenty (20) individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives.

Several other United States Citizen (USC) possible juvenile gang members from 7OP (Seven Oaks Park) MS-13 clique and SLC (Surenos Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Metro PD Gang Unit and ICE Officers/Agents.

All arrestees were taken to the ICE Nashville Office for processing. One (1) subject was released; due to a pending appeal on an IJ Order of Removal and active immigration bond. Nineteen (19) remain in ICE custody, pending removal from the United States.

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 26, 2010 2:31 PM
To: (b)(6), (b)(7)(C)
Subject: INDIVIDUALS ARRESTED ON 10-20-10 JOINT GANG OP
Importance: High
Follow Up Flag: Follow up
Flag Status: Completed
Attachments: INDIVIDUALS ARRESTED ON 10-20-10.doc

Hello (b)(6), (b)(7)(C)

Here is the info that you requested. Please be advised that this is an on going investigation by HSI and Metro PD Gang Unit.

Thank You,

(b)(6), (b)(7)(C)

*Supervisor Fugitive Operations
DHS/ICE/ERO
New Orleans Field Office
Nashville Sub-Office
(615) 316- (b)(6) desk
(615) 642- (b)(6) Blackberry*

5/4/2011

ICE Rule26 00045
ICE.2014-FOIA-01578.000150

FILE NO.	LAST	FIRST	DOB	Nationality	Status (1)	Sex	Convictions
(b)(6), (b)(7)(C)							
MEXIC	NTA		M	shoplift			
MEXIC	NTA	trespass	M				
MEXIC	T		M	NTA			
MEXIC	NTA	ewi sur 13	M				
MEXIC	NTA	trespass	M				
MEXIC	NTA		M	ewi			
MEXIC	T	NTA & NO DL	M				
HONDU	871		M	871			
GUATE	NTA	EWI	M				
HONDU	BB	assault sur 13	M				
HONDU	NTA	ewi	M				
HONDU	871	reinstale sur 13	M				
GUATE	NTA	EWI	M				
GUATE	NTA	NTA 5000	M				
HONDU	871	ewi	M				
HONDU	NTA		M	NTA			
HONDU	Reinst	ewi sur 13	M				
GUATE	NTA	EWI	M				
HONDU	NTA	dwl sur 13	M				
HONDU	RELEASED		M				
HONDU	PENDING BIA						

INDIVIDUALS ARRESTED ON 10/20/2010 - JOINT OP WITH HSI AND NASHVILLE METRO PD
 TOTAL = 20
 RELEASED = 1
 IN ICE CUSTODY = 19



U.S. Immigration
and Customs
Enforcement

ENFORCEMENT OPERATION PLAN

ICE Office: RAC Nashville, Tennessee	Case Number: (b)(7)e
Case Agent: (b)(6), (b)(7)(C)	Contact Number(s): 615-566- (b)(6)
ICE Supervisor: (b)(6), (b)(7)(C)	Contact Number(s): 615-533- (b)(6)
Title 21 Investigation: ☐ Yes (IF YES, DEA NOTIFICATION PAGES MUST BE COMPLETED) ☒ No (IF NO, DO NOT SUBMIT DEA NOTIFICATION PAGES)	
Operation Type: ☐ Controlled Delivery ☐ Search Warrant Execution ☐ Arrest Warrant Execution ☐ Flash Roll	☐ Surveillance ☐ U/C Meeting ☒ Other Knock and Talk
Violations/Charges: TN State Violations / 8 USC 1326 / 18 USC 922(g)	
Date/Time of Operation: 10/20/2010 1700 hours	
Location of Operation: Clairmont Apartments, 1019 Patricia Drive, Nashville, TN 37217	
Briefing Location: ICE Fugitive Operations Team Office, Nashville, TN	
Staging Location: ICE Fugitive Operations Team Office, Nashville, TN	
Address of Target Location: Clairmont Apartments, 1019 Patricia Drive, Nashville, TN	
Type of Premises: Apartment Complex	
Description of Premises: Multi-unit, two story, apartment complex	
Conveyance Type: N/A	
Type/Quantity of Contraband Involved: N/A	
Name of AUSA Assigned: John Webb	Office: Middle District of Tennessee
Telephone Number: 615-736- (b)(6)	Blackberry/Cell Number: N/A

Summary of Investigation: (provide a brief description of the investigation)

Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(7)(e), (b)(7)(f) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(c), (b)(7)(f)

(b)(6), (b)(7)(c), (b)(7)(f) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

Operational Objectives: (detail the action planned and the anticipated outcome)

HSI, ICE/FOT, and Metro Gang Unit will conduct knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. Metro Gang will make arrests for any state violations discovered during the knock and talk operation. HSI, along with ICE/FOT, will assist Metro Gang with the identification of any foreign nationals at the residences. HSI and ICE/FOT may also make administrative arrests of foreign nationals, specifically street gang members and their associates.

SUSPECT INFORMATION: (Attach additional information if more than one suspect)

Name of Suspect: N/A

Date of Birth (DOB): N/A

Address of Suspect: N/A

Physical Description: N/A

Vehicle(s): N/A

History of Violence or Weapons: N/A

Prior Criminal History: N/A

☐ US Citizen☒ Non-US Citizen

Immigration Status and A-Number (if known): N/A

Other Pertinent Information: N/A

Photo
Available☐ Yes
☒ No

UNDERCOVER AGENT: (Attach additional information if more than two U/C)

Primary U/C: No Undercover

Secondary U/C: No Undercover

☐ Other:

Name of U/C: N/A

Physical Description: N/A

Pager/Cellular Phone Number(s): N/A

U/C Vehicle: N/A

Distress Code	Arrest Signal	Radio Channels
Audio: N/A	Audio: N/A	Primary: (b)(7)e
Visual:	Visual:	Secondary:

Mobile Phone Numbers:

Detective (b)(6), (b)(7)(C) Metro Gang Unit 615-509- (b)(6)

Sector Phone Number: 1-800-973- (b)(7)e

Local Police Notified?	Name of P.D.:	P.D. Location & Phone:
☒ Yes ☐ No	Metropolitan Nashville Police Department	615-509-3742

Air Support To Be Utilized: ☐ Yes ☒ No

Type of Aircraft: N/A

Air Support Instructions: N/A

Nearest Hospital:

Name: Vanderbilt Medical Center
 Street: 1211 Medical Center Drive
 City, St: Nashville, TN 37232
 Phone: 615-322-5000

PERSONNEL ASSIGNMENTS:

Assignments:

(b)(7)e

	Name:	Call Sign:	Assignments:
1.	(b)(6) (b)(7)(C)	(b)(7)e	
2.			
3.			
4.			
5.			
6.			
7.			
8. ICE/Fugitive Operations Team - (b)(7)e			
9. Metro Nashville Police Gang Unit - (b)(7)e			
10.			
11.			
Prisoner Processing Location: 247 Venture Circle, Nashville, TN			
Evidence To Be Transported: N/A			
Equipment Required: Identifiable ICE/ POLICE clothing, Weapon, Flashlight			
Attire: Rough Duty			
Hazards: Apartments of suspected criminal street gang members - possibly weapons and/or animals.			

Report Assignments	
Name:	Assignment:
(b)(6), (b)(7)(C)	ROI
	Select One
	Select One
	Select One
	Select One
	Select One
Additional Information: HSI, ICE/FOT, and Metro Gang will brief at the ICE/FOT office prior to the knock and talk operation at the Clairmont Apartments. (b)(7)(e) each consisting of (b)(7)(e) HSI agents, (b)(7)(e) ICE/FOT officers, and (b)(7)(e) Metro Gang detectives, will conduct knock and talks on four apartments in the complex. Metro Gang will make arrests for violations of state law discovered during the knock and talk operation. HSI and ICE/FOT may make administrative arrests of foreign national gang members. Any individuals administratively arrested by HSI and/or ICE/FOT will be transported to the Venture Circle office for processing. HSI will handle any federal criminal prosecutions relating to the operation.	
Approval(s): (if required)	
Select One Signature/Title	
cc: Case File Sector DEA (if applicable) Title 21 Operation Plan Log (if applicable)	

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)(e)
Operation Date(s): 10/20/2010 (b)(7)(e)
Report Date: 10/21/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at (b)(7)(e) at the Nashville FOT Office. Scheduled shift will be (b)(7)(e) hrs and all hours worked after that will be claimed as AUO.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered, assisting with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams to include HSI and Nashville Metro PD (see HSI Op Plan). All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

Juvenile Issues

Due to the time and location, it is not anticipated that any juveniles will be encountered.

If a juvenile is apprehended, the primary or secondary juvenile coordinator will be contacted for placement.

Detainee Movement

Existing detention vans will be utilized to facilitate transport from arrest site to 247 Venture Circle, Nashville, TN for processing and to Davidson County Jail for detention.

Alien Property

Alien Property will not be received by ERO unless it is properly tagged and documented. Per New Orleans Field Office policy, any property not going with detained aliens will be retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher information for Detail
None

Contact Numbers

Address:
ICE RAC/Nashville
247 Venture Circle
Nashville, TN

Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	IEA	615-416-	
(b)(6), (b)(7)(C)	DO	504-329-	(b)(6)
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	SDDO	615-642-	

APPROVING OFFICIAL

Philip T. Miller
Field Office Director
New Orleans Field Office

Date

retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher information for Detail

None

Contact Numbers

Address:
ICE RAC/Nashville
247 Venture Circle
Nashville, TN

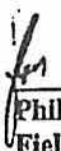
Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	IEA	615-416-	
(b)(6), (b)(7)(C)	DO	504-329-	(b)(6)
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	SDDO	615-642-	

APPROVING OFFICIAL


Phillip T. Miller
Field Office Director
New Orleans Field Office

OCT 19 2010

Date

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)e
Operation Date(s): 10/20/2010 (b)(7)e
Report Date: 10/19/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at 1700 hours at the Nashville FOT Office. All members of the FOT have agreed to change their shift from (b)(7)e to (b)(7)e for participation in operation.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered once Nashville Metro PD has secured consent to enter a residence. NVL Fug/Ops will assist with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams that include HSI and Nashville Metro PD (see HSI Op Plan) during the briefing that will be held on 10/20/10. All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

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(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, October 27, 2010 9:05 AM
 To: (b)(6), (b)(7)(C) (MNPDP); (b)(6), (b)(7)(C)
 Subject: (b)(6), (b)(7)(C), (b)(7)e
 Attachments: viewDocument.pdf; personImage.jpeg; untitled.bmp

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

Photos of (b)(6), (b)(7) and both (b)(6), (b)(7)(C) attached. (b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

(b)(6), (b)(7)(C)

Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642- (b)(6) (Cell)
 615-316- (b)(6) (Office)



(b)(7)e, (b)(6), (b)(7)(C), (b)(7)f

From: (b)(6), (b)(7)(C) (MNPDP); (b)(6), (b)(7)(C)
 Sent: Tuesday, October 26, 2010 5:35 PM
 To: (b)(6), (b)(7)(C)
 Subject: (b)(6), (b)(7)(C), (b)(7)e

Guys,

(b)(6), (b)(7)(C), (b)(7)e

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

4/27/2011

ICE Rule 26 00056
 ICE.2014-FOIA-01578.000161

Detective [REDACTED] (b)(6), (b)(7)(C)
Metro Nashville Police Department
Specialized Investigation Division
Intelligence Section /Gang Unit
SWAT
Office 782 [REDACTED] (b)(6)
Mobile 509- [REDACTED]

4/27/2011

ICE_Rule26_00057
ICE.2014-FOIA-01578.000162

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 12:26 PM
To: (b)(6), (b)(7)(C)
Subject: More gang members

Follow Up Flag: Follow up
Flag Status: Red

(b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 4:52 PM
To: (b)(6), (b)(7)(C)
Follow Up Flag: Follow up
Flag Status: Red
Attachments: Gang G-166.doc

Updated, waiting for NRC docs for reinstate

(b)(6), (b)(7)(C)

Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (b)(6) (Cell)
615-316- (b)(6) (Office)



4/27/2011

ICE Rule26 00059
ICE.2014-FOIA-04578.000164

MEMORANDUM OF INVESTIGATION

File Number Gang Investigation Community Shield Case (b)(7)e	Title: Nashville Hispanic Street Gangs	Control Office ICE/NVL FUGOPS
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Background: On several occasions, Fugitive Operations Team (FOT) officers have located and arrested ICE fugitives and criminal aliens at or near Claiborne Apartments at 1019 Patricia Ln, Nashville, TN. This apt complex has become bank owned and a new management company, Greystar took over managing the property within the last year. After this mgmt. transition, FOT officers were having some difficulty obtaining cooperation with onsite leasing staff regarding possible ICE fugitives or criminal aliens living or being present at the property. FOT officers continue to receive several fugitive cases with last known addresses or possible addresses located at this apt complex. Information suggests some of the leasing staff were sympathetic to illegal immigration and had direct ties to illegal immigrants. This property is also known to have a past and present gang, narcotic, and other criminal activity. The property is fenced in except for the entrance and is directly across the street from Glenview Elementary School. Other apt complexes adjacent to this property on Thompson Lane are also known for the same criminal activity and been subject to prior successful local and federal investigations involving an MS-13 clique (Thompson Place Lokotes).

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

FOT officers then began to conduct surveillance around the complex and research specific apts. This research revealed several possible occupants are either criminal aliens, prior removals, or have outstanding orders of removal from the United States. Investigation efforts also suggest several apts are used as stash houses for concealing weapons/firearms, used in narcotic sales, or possible alien smuggling.

Information was also obtained regarding ICE fugitives being sought by FOT officers that recently switched apts from (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

After being informed of these threats, FOT officers contacted Nashville Metro Police Gang Unit Detectives to establish information sharing and develop a plan of action. Over the past few weeks, Gang Unit Detectives, FOT officers, and HS-I Special Agents have met on multiple occasions with

(b)(7)e, (b)(7)f, (b)(6), (b)(7)c

(b)(7)e, (b)(7)f

Metro Gang Unit

Detectives have conducted multiple surveillance operations and made visible presence visits to the area.

Investigation efforts by all law enforcement agencies involved (b)(7)(c), (b)(7)(d), (b)(6), (b)(7)(c) have resulted in the following information on gang members and criminal activity in the area: Active street gangs SLC (Sureños Locos Criminales), and 7OP (Seven Oaks Park). SLC is believed to be a SUR 13 clique with one or both possibly being MS-13 affiliated. Although SUR13 and Mara Salvatrucha cooperation is abnormal historically, multiple known SLC gang members are from Honduras.

1. Two individuals are thought to be responsible for the threats and may or may not be gang affiliated to an MS-13 clique. These individuals known only as (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c) have been seen at the property and are possibly associated with (b)(6), (b)(7)(c). (b)(6), (b)(7)(c) also may reside at (b)(6), (b)(7)(c). Intelligence suggests that they are illegal aliens from Honduras. Both are primarily known to commit strong arm robbery, assaults, and other violent crimes against other illegal immigrants in the surrounding area (most unreported). They frequent billiard club/bar "El Uno" on Millwood road, one block from Claiborne apts. Both are known to carry handguns and to be drug users. UPDATE (b)(6), (b)(7)(c) arrested 10/20/10

2. (b)(6), (b)(7)(c) a possible Sur 13 gang member, is believed to be residing in (b)(6), (b)(7)(c) with at least six other individuals all believed to be illegal aliens previously removed from the United States. (b)(6), (b)(7)(c) is said to have "Sur 13" tattooed on the back of his head. Possible criminal activity involving narcotics and home invasion robbery (illegal alien contractors), and Burglary.

3. (b)(6), (b)(7)(c) along with his brother (b)(6), (b)(7)(c) are believed to be residing with USC spouse/girlfriend (b)(6), (b)(7)(c) at (b)(6), (b)(7)(c) Nashville, TN. Both are said to be illegal aliens from Honduras previously removed from the United States. Vehicle associated is a (b)(6), (b)(7)(c). (b)(6), (b)(7)(c) is described as (b)(6), (b)(7)(c). Criminal activity includes narcotics sales, home invasion robbery (illegal alien contractors), and Burglary. Frequent (b)(7)(c), (b)(7)(d), (b)(6), (b)(7)(c) (UPDATE arrested 10/27/10)

4. (b)(6), (b)(7)(c) is believed to be related (cousin) of (b)(6), (b)(7)(c). (b)(6), (b)(7)(c) is known as the "go to" for firearms including assault weapons. Possibly illegal alien from Honduras residing at apt complex a (b)(6), (b)(7)(c) next to El Uno. (b)(6), (b)(7)(c) and a (b)(6), (b)(7)(c) were previously listed at (b)(6), (b)(7)(c).

5. (b)(6), (b)(7)(c) is said to be the main narcotics connection in the area and frequents/possibly operates out of El Uno. (b)(6), (b)(7)(c) is described as (b)(6), (b)(7)(c). (b)(6), (b)(7)(c) is allegedly associated with a (b)(6), (b)(7)(c) DOB: (b)(6), (b)(7)(c) possibly in bldg (b)(6), (b)(7)(c). She has multiple apts in the complex associated with her name. (b)(6), (b)(7)(c) (Natz USC) appears to be related to (b)(6), (b)(7)(c) and has multiple apts associated to him at the complex via utility information (b)(6), (b)(7)(c).

The following information was found via use of (b)(7)(e).

(b)(6), (b)(7)(c) (DL# (b)(6), (b)(7)(c)) has (b)(7)(e) his name in apartments (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (DL# (b)(6), (b)(7)(c)) has (b)(7)(e) n his name in (b)(6), (b)(7)(c).

Two vehicle tag #s that he says are involved also:

(b)(6), (b)(7)(c) -Intel suggests a white male has dropped off several Hispanics near (b)(6), (b)(7)(c) in the complex in this vehicle. The vehicle comes back to a (b)(6), (b)(7)(c) (M/W) (b)(6), (b)(7)(c) Vehicle comes back to (b)(6), (b)(7)(c) -mother of (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) aka (b)(6), (b)(7)(c) -SLC gang member and ICE Fugitive -A (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) arrested 10/14/10 as ICE fugitive.

Apartments in question: (b)(6), (b)(7)(c)

HS-I Special Agents and FOT officers are planning to assist Nashville Metro Gang Unit in the near future with a series of "knock and talks" on some or all of these apartments to interpret and interview as needed.

Additional:

Liaisons established with the Metro Gang Unit have enabled HSI to initiate a Community Shield case involving violent street gangs in the middle Tennessee area of operation, as well as, assisted FOT officers in identifying multiple gang members that are ICE fugitives with outstanding orders of removal from the United States.

Community Shield Case (b)(6), (b)(7)(C)

FY11 ARRESTS TO DATE: 10/12/10, (b)(6), (b)(7)(C) - A (b)(6), (b)(7)(C) Mexico. (b)(6), (b)(7)(C) is a known Brown Pride gang member with a violent criminal history including homicide related and other assault and drug charges as a juvenile. (b)(6), (b)(7)(C) was previously removed from the U.S. to Mexico in 2006 and illegally re-entered. FOT officers and HSI Special Agents assisted Metro Gang Detectives in identifying (b)(6), (b)(7)(C) as an illegal alien after a search warrant was executed by Nashville Metro SWAT and Gang Unit involving illegal narcotic activity at (b)(6), (b)(7)(C) Nashville, TN. HSI Special Agents presented (b)(6), (b)(7)(C) for prosecution in the middle District of Tennessee for 8 USC 1326. (b)(6), (b)(7)(C) arrest and prosecution is a direct result of cooperation with FOT officers, HSI Special Agents, and the Nashville Metro Gang Unit.

ICE fugitives identified: 10/14/10 FOT officers were able to identify (b)(6), (b)(7)(C) aka (b)(6), (b)(7)(C) a known SLC gang member. Metro Gang Unit Detectives aware of (b)(6), (b)(7)(C) recent gang tagging activity secured a local graffiti search warrant on (b)(6), (b)(7)(C) residence, (b)(6), (b)(7)(C) Antioch, TN on 10/14/2010. (b)(6), (b)(7)(C) was not immediately located, and FOT officers were called to assist in interviewing (b)(6), (b)(7)(C) (A (b)(6), (b)(7)(C) - Honduras). (b)(6), (b)(7)(C) the mother of (b)(6), (b)(7)(C) was determined to be illegally present in the U.S. and an ICE fugitive. FOT officers arrested (b)(6), (b)(7)(C) and processed her as an ICE fugitive. As a result of the search warrant, it was revealed that (b)(6), (b)(7)(C) is also an ICE fugitive with outstanding order of removal under A (b)(6), (b)(7)(C) Gang Unit Detectives anticipate locating (b)(6), (b)(7)(C) in the near future for local charges and will immediately notify FOT officers. ****UPDATE** subject arrested during operation, 10/20/10 at Claiborne Apts (1019 Patricia Ln). Located at (b)(6), (b)(7)(C) Processed as ICE fugitive.**

******10/20/2010*** Multi Agency Gang Operation** - HS-I Special Agents, Nashville Fug Ops, and Metro Gang Unit Detectives (20 total LEO's) conducted a multi law enforcement operation at 1019 Patricia Ln, Nashville, TN (Claiborne Apts). Twenty illegal immigrants were identified, arrested, and processed for removal including three ICE fugitives and three persons found to have illegally re-entered the U.S. after being previously removed. The majority of persons arrested were found to have criminal arrest records in the United States.

Of the arrests, (b)(6), (b)(7)(C) aka (b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) (both Honduras) and (b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) were located and arrested as ICE fugitives. (b)(6), (b)(7)(C) is an admitted and known member of SUR 13 (SLC clique), and (b)(6), (b)(7)(C) claim no gang affiliation but (b)(6), (b)(7)(C) as (b)(6), (b)(7)(C) indicating gang association. (b)(6), (b)(7)(C) is believed to also be affiliated with the SUR 13 gang or 7OP clique of MS-13, as well as, a person responsible for several strong arm or armed robberies of other illegal immigrants in the area. (b)(6), (b)(7)(C) was located by Gang Unit Detective (b)(6), (b)(7)(C) after (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and two other males were found inside the apt surrounding themselves with several children. It is believed that (b)(6), (b)(7)(C) threatened the other women and/or persons living at this apt. Det. (b)(6), (b)(7)(C) found (b)(6), (b)(7)(C) in a back bedroom of the apt. sitting on a bed next to three small children. (b)(6), (b)(7)(C) initially did not comply with demands to stand up and show his hands. A large knife was found close to where (b)(6), (b)(7)(C) was sitting, yet (b)(6), (b)(7)(C) denied possession of it. Several other juvenile, possibly USC gang members of 7OP and SLC were identified and interviewed.

10/26/10-10/27/10— On 10/26/10

(b)(7)E, (b)(7)F, (b)(6), (b)(7)C

(b)(7)E, (b)(7)F, (b)(6), (b)(7)C

(b)(7)E, (b)(7)F 10/27/10- Metro Gang Unit Detectives

(b)(7)E, (b)(7)F, (b)(6), (b)(7)C

A vehicle stop

resulted in encountering

(b)(7)E, (b)(7)F

(b)(6), (b)(7)(C)

aka

(b)(6), (b)(7)(C)

and

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) FOT officer (b)(6), (b)(7)(C) and HS-I SA (b)(6), (b)(7)(C) assisted in determining the immigration status of both persons which determined that (b)(6), (b)(7)(C) was an ICE fugitive and (b)(6), (b)(7)(C) had been removed (3x) from the U.S. It is believed that other persons were to participate in the robbery (b)(6), (b)(7)(C) or (b)(6), (b)(7)(C) and possibly reside at (b)(6), (b)(7)(C) Nashville, TN.

Other investigative and enforcement actions are being developed to target several other possible gang members mentioned previously (b)(6), (b)(7)(C)

SIGNIFICANT ARRESTS:

10/12/10 (b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) Mexico (BROWN PRIDE) Re-entry prosecution

10/20/10 (b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) Honduras (SUR 13 / SLC) ICE fugitive

(b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) Mexico (possible SUR 13, SLC)

(b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) Honduras (possible SUR 13) ICE fugitive

10/27/10 (b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) Honduras (MS13 affiliate) ICE fugitive

(b)(6), (b)(7)(C) A (b)(6), (b)(7)(C) Honduras, 3x Prior deport

Deportation Officer

NVL/TN Fugitive Operations

(b)(6), (b)(7)(C)

Date

10/2010

Form G-166C (7-1-83)

ICE Rule 26 00063
—ICE.2014-FOIA-04578.000168

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 5:00 PM
To: (b)(6), (b)(7)(C) (MNPDP)
Subject: FW: More gang members --see below email

Follow Up Flag: Follow up
Flag Status: Red

Attachments: personImage.jpeg



personImage.jpeg
(22 KB)

(b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F)
(b)(6), (b)(7)(C) (b)(6), (b)(7)(C), (b)(7)(F), (b)(7)(I) (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F)
(b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F)

Getting confused just writing it.

(b)(6), (b)(7)(C)

Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (Cell)
615-316- (Office)

-----Original Message-----

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 12:26 PM
To: (b)(6), (b)(7)(C)
Subject: More gang members

(b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 5:04 PM
To: (b)(6), (b)(7)(C)
Subject: RE: More gang members

Follow Up Flag: Follow up
Flag Status: Red

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (Cell)
615-316- (b)(6) (Office)

-----Original Message-----

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 12:26 PM
To: (b)(6), (b)(7)(C)
Subject: More gang members

(b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 3:57 PM
To: (b)(6), (b)(7)(C)
Subject: (b)(6), (b)(7)(C)

It looks like (b)(6), (b)(7)(C) Drug case from 2005 is still open (b)(6), (b)(7)(C) ...He is showing an outstanding warrant for FTA for the same warrant number...He pled guilty to the charge, but I guess he didn't report to do his time...

Detective (b)(6), (b)(7)(C)
Metro Nashville Police Department
Specialized Investigation Division
Intelligence Section /Gang Unit
SWAT
Office 782 (b)(6)
Mobile 509-

4/27/2011

ICE Rule26 00067
ICE.2014-FOIA-01578.000172

ICE Significant Incident Report

Submitted Date and Time of Report: 10/21/2010 1805 EST

Incident Date: 10/20/2010	Incident Time: 1800	Incident Location: Nashville, TN
ICE Component: Investigations	Division: Division 2 - Financial, Narcotics & Public Safety Division	Area: NGU - ICE National Gang Unit (NGU)
Case Number: (b)(7)e	Office: NV - NASHVILLE, TN - RAC	Lead Agency: B - DHS / ICE
SEN Incident Number: (b)(7)e	Initial/Follow-Up: Initial	Event Status: Routine
Related SEN Number:	Related Case Number: —NV—	SEACATS Number: (b)(7)e
Intel Number:	ENFORCE Number: (b)(7)e	

Employee	Operational	Security	Other
☐ Shots Fired At Employee	☐ Air/Marine Incidents	☐ National Security Interest	☐ Escape
☐ Shots Fired By Employee	☐ Controlled Delivery	☐ Facility Disturbance	☐ Suicide Attempt
☐ Employee Assaulted	☐ Significant Seizure	☐ Terrorism Related	☐ Hunger Strike
☐ Employee Death	☒ Significant Arrest	☐ Bomb Threat/Suspicious Activity	☒ Media Interest
☐ Employee Injured	☐ Rescue	☐ Foreign Military/Police Incursion	☐ Alien Injury/Death
☐ Employee Arrested	☐ Weapon Violations	☐ WMD/HAZMAT	☐ Vehicle Incidents
☐ Firearms Discharge to Include Unintentional Discharge	☐ Other Agency Interest	☐ Demonstrations	☐ Other
☐ Use of Baton or other Impact Weapon		☐ JTTF	☐ Predator
☐ Use of OC Spray or other Chemical Agents			
☐ Other Use of Force			
☐ Loss or Theft of Firearm or Body Armor			

Principal Subject: Person	Last Name: (b)(6), (b)(7)(C)	First Name: (b)(6), (b)(7)(C)	Alien ID:
Date of Birth: (b)(6), (b)(7)(C)	Country of Birth: Honduras	Citizenship: Honduras	

Narrative

Report Title: Nashville Gang Enforcement Operation

Over the past few weeks, Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F) HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F).

On October 20, 2010, HSI, ICE/FOT, and Metro Gang Unit conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their

4/27/2011

ICE Rule 26 00068
—ICE.2014-FOIA-01578.000173

associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang unit with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of foreign nationals, specifically street gang members and their associates.

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20
Immigration Status: NTAs (13), B&Bs (3), Reinstatements (3), BIA Appeal Pending (1) - released on order of supervision by ERO
Nationalities: Honduras (9), Mexico (7), Guatemala (4)
Gang Members/Associates: 3 - Sureños Locos Criminales (SLC), a SUR 13 clique
Criminal Charges: None
SAS: (b)(7)(e)

Violations of Law: TN State Violations / 8 USC 1326 / 18 USC 922(g)

Action Taken:

Other Agencies Notified:

Name	Agency	Phone	Date	Time
none				

Injuries: No	Injuries (Names and Extent of Injury):
Fatalities: No	
Damage: No	

Reported to ICE Operations Center via Phone:

Reported By: (b)(6), (b)(7)(C)	Phone: 61578 (b)(6)	Cell/Pager: 615566 (b)(6)
Supervisor: (b)(6), (b)(7)(C)	Phone: (901) 312 (b)(6)	Cell/Pager: 901553 (b)(6)

4/27/2011

ICE Rule 26 00069
ICE.2014-FOIA-01578.000174

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Tuesday, November 02, 2010 11:50 AM
 To: (b)(6), (b)(7)(C) (MNPDP)
 Subject: info
 Follow Up Flag: Follow up
 Flag Status: Red
 Attachments: unfilled.bmp

(b)(6), (b)(7)(C) had (b)(6), (b)(7)(C) there today (b)(6), (b)(7)(C) -dl (b)(6), (b)(7)(C) in attachment. I think this is going to be one of our boys. Possible FBI (b)(6), (b)(7)(C), (b)(7)(C) for (b)(6), (b)(7)(C) associated with generic ssn (b)(6), (b)(7)(C). He has lengthy criminal record In SC, TX, and NC for Burglary/Vehicle, Vehicle Theft etc. Other addresses: (b)(6), (b)(7)(C) same as (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C). Other vehicles: (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) looks like a good one to pull from as well. (b)(6), (b)(7)(C) likely Mexican citizen, FBI (b)(6), (b)(7)(C), (b)(7)(C) using fraud ssn (b)(6), (b)(7)(C). Vehicles there are reg to (b)(6), (b)(7)(C) at Clairmont (b)(6), (b)(7)(C).

New company is managing there now, so the phone calls should subside (besides mine).

(b)(6), (b)(7)(C)
 Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642 (Cell)
 615-316 (b)(6) (Office)



4/27/2011

ICE_Rule26_00070
ICE.2014-FOIA-01578.000175

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Friday, November 12, 2010 2:38 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: (b)(6), (b)(7)(C) - A (b)(6), (b)(7)(C) prior Deport
 Follow Up Flag: Follow up
 Flag Status: Red
 Attachments: (b)(6), (b)(7)(C).bmp; Affidavit-AJPRequestHandler-ApplicationServerThread- (b)(6), (b)(7)(C).pdf; gun affidavit.pdf

(b)(6), (b)(7)(C) this has to be our guy, his address given was (b)(6), (b)(7)(C) can ID him. If it is him, we got the original targets with only the funny moniker guys (b)(6), (b)(7)(C) left.

(b)(6), (b)(7)(C) FBI (b)(6), (b)(7)(C) A# (b)(6), (b)(7)(C) Honduras, Prior Deport. Has handgun possession conviction 2009 (misd). He fits the description exactly, aliases (b)(6), (b)(7)(C) The gun affidavit attached lists (b)(6), (b)(7)(C) as driver of vehicle at arrest which was (b)(6), (b)(7)(C) alias.

Guilty of below charged offense today at 12PM. Affidavit attached showing offense around (b)(6), (b)(7)(C) (likely attempting to burglarize vehicles). He was with other individuals (juvy's) claiming to live (b)(6), (b)(7)(C) A little too coincidental with suspected address for (b)(6), (b)(7)(C) etc (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) I think this is one of our primary targets from the OP on 10/20/10. Possibly affiliated with a MS clique. He and (b)(6), (b)(7)(C) (A (b)(6), (b)(7)(C)) were the original targets and suspects allegedly committing the strong arm and armed robberies of other immigrants in that area that started the "investigation."

Inmate Information

(b)(6), (b)(7)(C)

Projected Release Date: | [Click here for Vine Notification](#)

Facility:	Criminal Justice Center	CIS No.:	(b)(6), (b)(7)(C)
Unit-Pod:	1-A	OCA No.:	(b)(6), (b)(7)(C)
Security Level:		Sex:	M
Admitted Date:	Nov 12, 2010 1:13:47 AM	Race:	White
Initial Booking Date:	Nov 12, 2010 1:13:47 AM	Date of Birth:	(b)(6), (b)(7)(C)
Medical Screening Date:	Nov 12, 2010 1:27:48 AM	Age:	19
Final Booking Date:	Nov 12, 2010 1:43:54 AM		

Active Charges & Sentencing Information

This Inmate has a total of 1 charges.

Warrant No: (b)(6), (b)(7)(C)

Warrant No.: (b)(6), (b)(7)(C)

Bond Amount: \$2,000.00

Arrested Charge: CONTRIBUTING TO THE DELINQUENCY OF A MINOR Type: Misdemeanor

Convicted Charge:

Type:

Status of Charge: Awaiting Trial

Disposition:

4/27/2011

ICE_Rule26_00071
ICE.2014-FOIA-01578.000176

(b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
815-842- (Cell)
815-318- (Office)



4/27/2011

ICE Rule26 00072
ICE.2014-FOIA-04578.000177

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

COMPLAINT NUMBER: (b)(6), (b)(7)(C)

WARRANT NUMBER: (b)(6), (b)(7)(C)

PROSECUTOR: (b)(6), (b)(7)(C)

DEFENDANT: (b)(6), (b)(7)(C)

VICTIM:

STATE OF TENNESSEE, COUNTY OF DAVIDSON
AFFIDAVIT
CONTRIBUTING TO THE DELINQUENCY OF A MINOR
T.C.A. 37-1-156

Personally appeared before me, the undersigned, Commissioner, the prosecutor named above and made oath in due form of law that he personally observed the defendant named above on 11/12/2010 in Davidson County, unlawfully contributed or encouraged the delinquency or unruly behavior of the minor victim named above, who was under the age of eighteen (18) years, by participating as a principal with the minor in an act of delinquency or unruly conduct and that *the probable cause is as follows:*

A resident in the area of (b)(6), (b)(7)(C) called police stating she observed what appeared to be 3 juveniles shining flashlights into vehicles on (b)(6), (b)(7)(C) while she was walking her dog. The resident told police that once the individuals saw her and her husband they began walking away. Officers arrived in the area and located the defendant and a 16 year old minor walking toward the intersection of (b)(6), (b)(7)(C). The two individuals matched the description of the one given and the defendant was carrying a silver "hammer drill" and a screw driver and was wearing gloves. The minor also had a flashlight in his possession. A Spanish speaking officer arrived and neither individual could give a reasonable explanation as to why they were out roaming at that time of night and why the juvenile was out past curfew. The two only stated they were walking home, which the defendant stated was a house around the corner and could not give a numerical. The minor stated both he and the defendant lived in an apartment complex on (b)(6), (b)(7)(C). The defendant did not possess a valid form of identification for a misdemeanor citation for contributing to the delinquency of a minor. The drill was turned into the property section.

Prosecutor: (b)(6), (b)(7)(C)
4701 Lebanon Pke.

ARREST WARRANT

Information on oath having been made, that on the day and year aforesaid, and in the County aforesaid, the offense of Contributing to the Delinquency of a Minor A MISD, as aforesaid, has been committed and charging the defendant thereof, you are therefore commanded, in the name of the State, forthwith to arrest and bring the defendant before a judge of the Court of General Sessions of Davidson County, Tennessee, to answer the above charge.

Sworn to and subscribed before me on 11/12/2010 01:26:03 .

Thomas Edward Nelson
Judge of the Metropolitan General Sessions Court/Commissioner
1 of 1 pages

1 of 1 pages

ICE Rule 26 00074
ICE 2014-FOIA-04578.000179

PROSECUTOR:

DEFENDANT:

(b)(6), (b)(7)(C)

VICTIM:

STATE OF TENNESSEE, COUNTY OF DAVIDSON
AFFIDAVIT
UNLAWFUL POSSESSION OF A WEAPON
T.C.A. 39-17-1307

Personally appeared before me, the undersigned, [Select one] X Commissioner, ___ Metropolitan General Sessions Judge, the prosecutor named above and made oath in due form of law that [Select one] X he ___ she [Select one] X personally observed ___ has probable cause to believe that the defendant named above on 06/22/2009 in Davidson County, with the intent to go armed, did intentionally or knowingly carry [Select one] X a handgun at a place open to the public where one (1) or more persons were present ___ a firearm ___ a knife with a blade exceeding four inches (4") ___ a club, and *the probable cause is as follows:* Defendant was the passenger in a vehicle that was stopped for a traffic violation. The driver of that vehicle, (b)(6), (b)(7)(C) didnt have a license or any form of identification and was being taken to jail. The defendant, also without a license, couldnt make arrangements to have the car picked up so it was being towed. Defendant stated it was his car and was making payments on it to the registered owner. During an inventory search of the vehicle, a Kel Tec P-32 (ser)(b)(6), (b)(7)(C) was found on the floorboard of the passenger seat where the defendant was sitting. The barrel was pointing towards the back seat and the butt was facing the passenger door. The magazine was inserted into the gun with six rounds inside and eight lying on the floorboard.

ESignature

Prosecutor:

(b)(6), (b)(7)(C)

200 James Robertson Parkway

Nashville, Tennessee 37201

ARREST WARRANT

Information on oath having been made, that on the day and year aforesaid, and in the County aforesaid, the offense of Weapon - Handgun A MISD, as aforesaid, has been committed and charging the defendant thereof, you are therefore commanded, in the name of the State, forthwith to arrest and bring the defendant before a judge of the Court of General Sessions of Davidson County, Tennessee, to answer the above charge.

Sworn to and subscribed before me on 06/22/2009 02:49:28 .

Carolyn Piphus

Judge of the Metropolitan General Sessions Court/Commissioner

1 of 1 pages

1 of 1 pages

(b)(6), (b)(7)(C)

brother -
of

(b)(6), (b)(7)(C)

As filed
Referring

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

MEMORANDUM OF INVESTIGATION

File Number	Title:	Control Office
Gang Investigation Community Shield Case (b)(7)e	Nashville Hispanic Street Gangs	ICE/NVL FUGOPS

Background: On several occasions, Fugitive Operations Team (FOT) officers have located and arrested ICE fugitives and criminal aliens at or near Claiborne Apartments at (b)(6), (b)(7)(C) Nashville, TN. This apt complex has become bank owned and a new management company, Greystar took over managing the property within the last year. After this mgmt. transition, FOT officers were having some difficulty obtaining cooperation with onsite leasing staff regarding possible ICE fugitives or criminal aliens living or being present at the property. FOT officers continue to receive several fugitive cases with last known addresses or possible addresses located at this apt complex. Information suggests some of the leasing staff were sympathetic to illegal immigration and had direct ties to illegal immigrants. This property is also known to have a past and present gang, narcotic, and other criminal activity. The property is fenced in except for the entrance and is directly across the street from Glenview Elementary School. Other apt complexes adjacent to this property on Thompson Lane are also known for the same criminal activity and been subject to prior successful local and federal investigations involving an MS-13 clique (Thompson Place Lokotes).

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

FOT officers then began to conduct surveillance around the complex and research specific apts. This research revealed several possible occupants are either criminal aliens, prior removals, or have outstanding orders of removal from the United States. Investigation efforts also suggest several apts are used as stash houses for concealing weapons/firearms, used in narcotic sales, or possible alien smuggling.

Information was also obtained regarding ICE fugitives being sought by FOT officers that recently switched apts from (b)(7)e, (b)(7)f

(b)(7)e, (b)(7)f

After being informed of these threats, FOT officers contacted Nashville Metro Police Gang Unit Detectives to establish information sharing and develop a plan of action. Over the past few weeks, Gang Unit Detectives, FOT officers, and HS-I Special Agents have met on multiple occasions with

(b)(7)e, (b)(7)f, (b)(6), (b)(7)c

(b)(7)c, (b)(7)f, (b)(6), (b)(7)c

(b)(6), (b)(7)c, (b)(7)e, (b)(7)f

Metro Gang Unit Detectives have conducted multiple surveillance operations and made visible presence visits to the area.

Investigation efforts by all law enforcement agencies involved and intelligence received from informants have resulted in the following information on gang members and criminal activity in the area: Active street gangs SLC (Sureños Locos Criminales), and 7OP (Seven Oaks Park). SLC is believed to be a SUR 13 clique with one or both possibly being MS-13 affiliated. Although SUR13 and Mara Salvatrucha cooperation is abnormal historically, multiple known SLC gang members are from Honduras.

1. Two individuals are thought to be responsible for the threats and may or may not be gang affiliated to an MS-13 clique. These individuals known only as (b)(6), (b)(7)(C) have been seen at the property and are possibly associated with (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) also may reside at (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) Intelligence suggests that they are illegal aliens from Honduras. Both are primarily known to commit strong arm robbery, assaults, and other violent crimes against other illegal immigrants in the surrounding area (most unreported). They frequent billiard club/bar "El Uno" on Millwood road, one block from Claiborne apts. Both are known to carry handguns and to be drug users. **UPDATE: ICE FUGITIVE** (b)(6), (b)(7)(C) **arrested 10/20/10 Operation** (b)(6), (b)(7)(C) **arrested 11/12/10 as re-entry A** (b)(6), (b)(7)(C) **after local arrest/conviction for Contributing to Delinquency of Minor. 2009 GUN arrest and conviction found in criminal record.** (b)(6), (b)(7)(C) **will be submitted for federal prosecution to Middle District of Tennessee US ATTY OFFICE.**

2. (b)(6), (b)(7)(C) a possible Sur 13 gang member, is believed to be residing in (b)(6), (b)(7)(C) with at least six other individuals all believed to be illegal aliens previously removed from the United States. Chi Chi is said to have "Sur 13" tattooed on the back of his head. Possible criminal activity involving narcotics and home invasion robbery (illegal alien contractors), and Burglary.

3. (b)(6), (b)(7)(C) along with his brother (b)(6), (b)(7)(C) are believed to be residing with USC spouse/girlfriend (b)(6), (b)(7)(C) at (b)(6), (b)(7)(C) Nashville, TN. Both are said to be illegal aliens from Honduras previously removed from the United States. Vehicle associated is a (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) is described as (b)(6), (b)(7)(C). Criminal activity includes narcotics sales, home invasion robbery (illegal alien contractors), and Burglary. Frequent billiards club/bar "El Uno." **(UPDATE arrested 10/27/10)**

4. (b)(6), (b)(7)(C) is believed to be related (cousin) of (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) is known as the "go to" for firearms including assault weapons. Possibly illegal alien from Honduras residing at apt complex at (b)(6), (b)(7)(C) next to El Uno. (b)(6), (b)(7)(C) and a (b)(6), (b)(7)(C) were previously listed at (b)(6), (b)(7)(C).

5. (b)(6), (b)(7)(C) is said to be the main narcotics connection in the area and frequents/possibly operates out of El Uno. (b)(6), (b)(7)(C) is described as (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) is allegedly associated with a (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) possibly in (b)(6), (b)(7)(C). She has multiple apts in the complex associated with her name. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) Natz USC) appears to be related to (b)(6), (b)(7)(C) and has multiple apts associated to him at the complex via utility information (b)(6), (b)(7)(C).

The following information was found via use of (b)(7)(C)

(b)(6), (b)(7)(C) (DL# (b)(6), (b)(7)(C)) has (b)(7)(C) in his name in apartments (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) (DL# (b)(6), (b)(7)(C)) has (b)(7)(C) in his name in (b)(6), (b)(7)(C).

Two vehicle tag #s that he says are involved also:

(b)(6), (b)(7)(C) -intel suggests a white male has dropped off several Hispanics near (b)(6), (b)(7)(C) in the complex in this vehicle. The vehicle comes back to a (b)(6), (b)(7)(C) (M/W)

(b)(6), (b)(7)(C) Vehicle comes back to (b)(6), (b)(7)(C) -mother of (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) aka (b)(6), (b)(7)(C) -SLC gang member and ICE Fugitive -A (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) arrested 10/14/10 as ICE fugitive.

Apartments in question: [REDACTED]

(b)(6), (b)(7)(C)

HS-I Special Agents and FOT officers are planning to assist Nashville Metro Gang Unit in the near future with a series of "knock and talks" on some or all of these apartments to interpret and interview as needed.

Additional:

Liaisons established with the Metro Gang Unit have enabled HSI to initiate a Community Shield case involving violent street gangs in the middle Tennessee area of operation, as well as, assisted FOT officers in identifying multiple gang members that are ICE fugitives with outstanding orders of removal from the United States.

Community Shield Case [REDACTED]

(b)(7)(e)

FY11 ARRESTS TO DATE: 10/12/10. [REDACTED] (b)(6), (b)(7)(C) -A [REDACTED] (b)(6), (b)(7)(C) Mexico. [REDACTED] (b)(6), (b)(7)(C) is a known Brown Pride gang member with a violent criminal history including homicide related and other assault and drug charges as a juvenile. [REDACTED] (b)(6), (b)(7)(C) was previously removed from the U.S. to Mexico in 2006 and illegally re-entered. FOT officers and HSI Special Agents assisted Metro Gang Detectives in identifying [REDACTED] (b)(6), (b)(7)(C) as an illegal alien after a search warrant was executed by Nashville Metro SWAT and Gang Unit involving illegal narcotic activity at [REDACTED] (b)(6), (b)(7)(C), Nashville, TN. HSI Special Agents presented [REDACTED] (b)(6), (b)(7)(C) for prosecution in the middle District of Tennessee for 8 USC 1326. [REDACTED] (b)(6), (b)(7)(C) arrest and prosecution is a direct result of cooperation with FOT officers, HSI Special Agents, and the Nashville Metro Gang Unit.

ICE Fugitives identified: 10/14/10 FOT officers were able to identify [REDACTED] (b)(6), (b)(7)(C) aka [REDACTED] (b)(6), (b)(7)(C) a known SLC gang member. Metro Gang Unit Detectives aware of [REDACTED] (b)(6), (b)(7)(C) recent gang tagging activity secured a local graffiti search warrant on Castro's residence, [REDACTED] (b)(6), (b)(7)(C) Antioch, TN on 10/14/2010. [REDACTED] (b)(6), (b)(7)(C) was not immediately located, and FOT officers were called to assist in interviewing [REDACTED] (b)(6), (b)(7)(C) (A [REDACTED] (b)(6), (b)(7)(C) -Honduras). [REDACTED] (b)(6), (b)(7)(C) the mother of [REDACTED] (b)(6), (b)(7)(C) was determined to be illegally present in the U.S. and an ICE fugitive. FOT officers arrested [REDACTED] (b)(6), (b)(7)(C) and processed her as an ICE fugitive. As a result of the search warrant, it was revealed that [REDACTED] (b)(6), (b)(7)(C) is also an ICE fugitive with outstanding order of removal under A [REDACTED] (b)(6), (b)(7)(C). Gang Unit Detectives anticipate locating [REDACTED] (b)(6), (b)(7)(C) in the near future for local charges and will immediately notify FOT officers. ****UPDATE** subject arrested during operation, 10/20/10 at Claiborne Apts** [REDACTED] (b)(6), (b)(7)(C). **Located at** [REDACTED] (b)(6), (b)(7)(C). **Processed as ICE fugitive.**

******10/20/2010**** Multi Agency Gang Operation** - HS-I Special Agents, Nashville Fug Ops, and Metro Gang Unit Detectives (20 total LEO's) conducted a multi law enforcement operation at 1019 Patricia Ln, Nashville, TN (Claiborne Apts). Twenty illegal immigrants were identified, arrested, and processed for removal including three ICE fugitives and three persons found to have illegally re-entered the U.S. after being previously removed. The majority of persons arrested were found to have criminal arrest records in the United States.

Of the arrests, [REDACTED] (b)(6), (b)(7)(C) A [REDACTED] (b)(6), (b)(7)(C) and [REDACTED] (b)(6), (b)(7)(C) [REDACTED] (b)(6), (b)(7)(C) (both Honduras) at [REDACTED] (b)(6), (b)(7)(C) [REDACTED] (b)(6), (b)(7)(C) were located and arrested as ICE fugitives. [REDACTED] (b)(6), (b)(7)(C) is an admitted and known member of SUR 13 (SLC clique), and [REDACTED] (b)(6), (b)(7)(C) claim no gang affiliation but has matching tattoos as [REDACTED] (b)(6), (b)(7)(C) indicating gang association. [REDACTED] (b)(6), (b)(7)(C) is believed to also be affiliated with the SUR 13 gang or 7OP clique of MS-13, as well as, a person responsible for several strong arm or armed robberies of other illegal immigrants in the area. [REDACTED] (b)(6), (b)(7)(C) was located by Gang Unit Detective [REDACTED] (b)(6), (b)(7)(C) after other persons in the area secretly informed officers that [REDACTED] (b)(6), (b)(7)(C) was hiding in [REDACTED] (b)(6), (b)(7)(C) [REDACTED] (b)(6), (b)(7)(C) and two other males were found inside the apt surrounding themselves with several children. It is believed that [REDACTED] (b)(6), (b)(7)(C) threatened the other women and/or persons living at this apt. Det. [REDACTED] (b)(6), (b)(7)(C) found [REDACTED] (b)(6), (b)(7)(C) in a back bedroom of

the apt. sitting on a bed next to three small children. (b)(6), (b)(7)(C) initially did not comply with demands to stand up and show his hands. A large knife was found close to where (b)(6), (b)(7)(C) was sitting, yet ESCOBAR denied possession of it. Several other juvenile, possibly USC gang members of 7OP and SLC were identified and interviewed.

10/26/10-10/27/10— On 10/26/10,

10/27/10. 10/27/10- Metro Gang Unit Detectives (b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f) to coordinate and intercept the vehicle containing these persons while en-route to the robbery location. A vehicle stop resulted in encountering (b)(6), (b)(7)(C) aka (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) FOT officer (b)(6), (b)(7)(C) and HS-I SA (b)(6), (b)(7)(C) assisted in determining the immigration status of both persons which determined that (b)(6), (b)(7)(C) was an ICE fugitive and (b)(6), (b)(7)(C) had been removed (3x) from the U.S. It is believed that other persons were to participate in the robbery (b)(6), (b)(7)(C) and possibly reside at (b)(6), (b)(7)(C)

Other investigative and enforcement actions are being developed to target several other possible gang members mentioned previously (b)(6), (b)(7)(C)

SIGNIFICANT ARRESTS:

10/12/10 (b)(6), (b)(7)(C) Mexico (BROWN PRIDE) Re-entry prosecution
10/20/10 (b)(6), (b)(7)(C) Honduras (SUR 13 / SLC) ICE fugitive
(b)(6), (b)(7)(C) Mexico (possible SUR 13, SLC)
(b)(6), (b)(7)(C) Honduras (possible MS or SUR 13) ICE fugitive
10/27/10 (b)(6), (b)(7)(C) Honduras (MS13 affiliate)
ICE fugitive
(b)(6), (b)(7)(C) Honduras, 3x Prior deport
11/12/10 (b)(6), (b)(7)(C) Honduras, Prior Deport (MS 13 affiliate)
3/9/2011 (b)(6), (b)(7)(C) Mexico- ICE fugitive (possible Sur 13 or DTO)
(b)(6), (b)(7)(C) Mexico-Reentry (possible Sur13 or DTO)

(b)(7)(e), (b)(7)(f), (b)(6), (b)(7)(C)

On March 9, 2011, Nashville, TN ICE Fugitive Operations Team (FOT) Officers, Nashville Metro Police Gang Unit Detectives, and Homeland Security Investigations (HSI) Special Agents located and arrested two known Sureno (SUR 13) gang members, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) at (b)(6), (b)(7)(C) in Nashville, TN. Gang Unit Detectives forwarded information to ICE officers of possible gang activity at the residence and the possible presence of (b)(6), (b)(7)(C) an ICE fugitive. Both (b)(6), (b)(7)(C) and the address in question were known to FOT officers from previous arrests and fugitive investigations. FOT officers had previously arrested (b)(6), (b)(7)(C) for immigration violations at a residence nearby in January of 2010, and Metro Gang Unit Detectives had also previously encountered and identified (b)(6), (b)(7)(C) as a SUR 13 gang member or affiliate months later. Consent to enter and search the residence was granted by (b)(6), (b)(7)(C). Upon entry, Officers located (b)(6), (b)(7)(C) and an individual later identified as (b)(6), (b)(7)(C) in a bedroom. (b)(6), (b)(7)(C) was immediately arrested as an ICE fugitive with an outstanding Warrant of Removal/Deportation. (b)(6), (b)(7)(C) was arrested for immigration violations after it was determined that he was a citizen and national of Mexico illegally present in the United States. Preliminary records checks related to (b)(6), (b)(7)(C) revealed possible significant criminal history and prior immigration removals from the United States. Also, a small bag of what appeared to be narcotics (cocaine) was also found nearby the bed that both subjects were sitting on in the bedroom. A subsequent field test of the contents in the bag returned

negative results for the presence of cocaine. Consequently, both (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were transported to the Nashville ICE office for further processing.

During processing, both (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) fingerprints were taken and submitted via (b)(6), (b)(7)(C) and returned the following results.

(b)(6), (b)(7)(C) identity was positively confirmed as an ICE fugitive with an outstanding Warrant for his Removal/Deportation. (b)(6), (b)(7)(C) failed to appear at his immigration hearing and was ordered removed to Mexico in absentia. (b)(7)(e) showed the previous immigration arrest for (b)(6), (b)(7)(C) but did not return any other criminal history. However, other criminal activity potentially involving (b)(6), (b)(7)(C) is suspected by Gang Unit Detectives. The outstanding Warrant of Removal/Deportation for (b)(6), (b)(7)(C) was served, and he will remain in ICE custody until removed to Mexico.

(b)(6), (b)(7)(C) identity was confirmed via (b)(7)(e) and was positive for immigration and criminal history under Alien Registration number A (b)(6), (b)(7)(C) and FBI (b)(6), (b)(7)(C), (b)(7)(e). The immigration history for (b)(6), (b)(7)(C) shows a previous immigration arrest by ICE RAC/Nashville related to a 287g encounter in Davidson County Jail. (b)(6), (b)(7)(C) was processed for removal and later ordered removed from the United States to Mexico by an immigration judge on August 26, 2008 at Oakdale, LA. (b)(6), (b)(7)(C) departed the United States on or about September 18, 2008 at Brownsville, Texas. (b)(7)(e) showed significant criminal history for (b)(6), (b)(7)(C) including local arrests in Nashville in 2008 for Vandalism, Aggravated Assault with a Deadly Weapon, and Possession of a Controlled Substance for Casual Exchange. (b)(6), (b)(7)(C) record shows convictions for Possession for Casual Exchange on June 5, 2008 (sentenced to 30 days), and Assault/Reckless Endangerment with a Deadly Weapon on July 1, 2008 (sentenced to 18 months-suspended and credit for time served). Certified conviction records were requested from the Davidson County Criminal Court Clerk's Office, and affidavits related to these convictions were obtained from the court's website. (b)(6), (b)(7)(C) is also believed to be a SUR 13 gang member or affiliate.

(b)(6), (b)(7)(C) was given the Miranda Warning in the Spanish language by Officer (b)(6), (b)(7)(C) and witnessed by Officer (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) invoked the right to remain silent and declined to provide a sworn statement detailing his illegal re-entry into the United States after being previously removed.

(b)(6), (b)(7)(C) declined to contact his consular official when given the opportunity, and he was provided list of legal services.

(b)(6), (b)(7)(C) will remain in ICE custody with his order of removal from the United States being reinstated. (b)(6), (b)(7)(C) will be presented to the United States Attorney's Office in the Middle District of Tennessee for possible prosecution for violating Title 8 USC 1326, illegally re-entering the United States after being previously removed.

03/16/2011- (b)(6), (b)(7)(C) Honduras A (b)(6), (b)(7)(C) Re-entry prosecution.

(b)(6), (b)(7)(C) was using the identity of an ICE fugitive targeted for arrest. (b)(6), (b)(7)(C) criminal record includes a felony narcotics trafficking conviction in Davidson County, TN. -Brother of (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) Both believed to be involved in various illegal and narcotic trafficking activities. Arrested at (b)(6), (b)(7)(C) Nashville, TN. Submitted for prosecution under 8 USC 1326.

Deportation Officer
NVL/TN Fugitive Operations

(b)(6), (b)(7)(C)

Date

3/2011

Form G-166C (7-1-83)

ICE Rule26 00081
-ICE.2014-FOIA-01578.000186

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)e
Operation Date(s): 10/20/2010 (b)(7)e hrs
Report Date: 10/21/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at 1700 hours at the Nashville FOT Office. Scheduled shift will be 1400 hrs to 2200 hrs and all hours worked after that will be claimed as AUO.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered, assisting with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams to include HSI and Nashville Metro PD (see HSI Op Plan). All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

Juvenile Issues

Due to the time and location, it is not anticipated that any juveniles will be encountered.

If a juvenile is apprehended, the primary or secondary juvenile coordinator will be contacted for placement.

Detainee Movement

Existing detention vans will be utilized to facilitate transport from arrest site to 247 Venture Circle, Nashville, TN for processing and to Davidson County Jail for detention.

Alien Property

Alien Property will not be received by ERO unless it is properly tagged and documented. Per New Orleans Field Office policy, any property not going with detained aliens will be retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher information for Detail

None

Contact Numbers

Address:

ICE RAC/Nashville
247 Venture Circle
Nashville, TN

Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	IEA	615-416-	
(b)(6), (b)(7)(C)	DO	504-329-	(b)(6)
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	SDDO	615-642-	

APPROVING OFFICIAL

Philip T. Miller
Field Office Director
New Orleans Field Office

Date

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)e
Operation Date(s): 10/20/2010 (b)(7)e hrs
Report Date: 10/19/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at 1700 hours at the Nashville FOT Office. All members of the FOT have agreed to change their shift from 0700-1500 to 1400 to 2200 for participation in operation.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered once Nashville Metro PD has secured consent to enter a residence. NVL Fug/Ops will assist with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams that include HSI and Nashville Metro PD (see HSI Op Plan) during the briefing that will be held on 10/20/10. All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

Juvenile Issues

Due to the time and location, it is not anticipated that any juveniles will be encountered.

If a juvenile is apprehended, the primary or secondary juvenile coordinator will be contacted for placement.

Detainee Movement

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retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher Information for Detail

None

Contact Numbers

Address:

ICE RAC/Nashville
247 Venture Circle
Nashville, TN

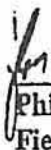
Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	IEA	615-416-	
(b)(6), (b)(7)(C)	DO	504-329-	(b)(6)
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	SDDO	615-642-	

APPROVING OFFICIAL

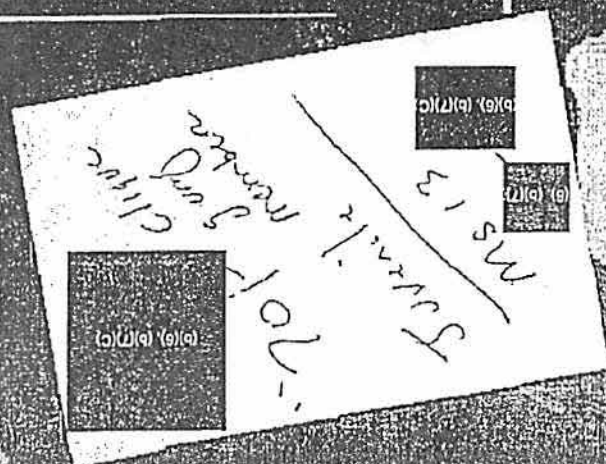


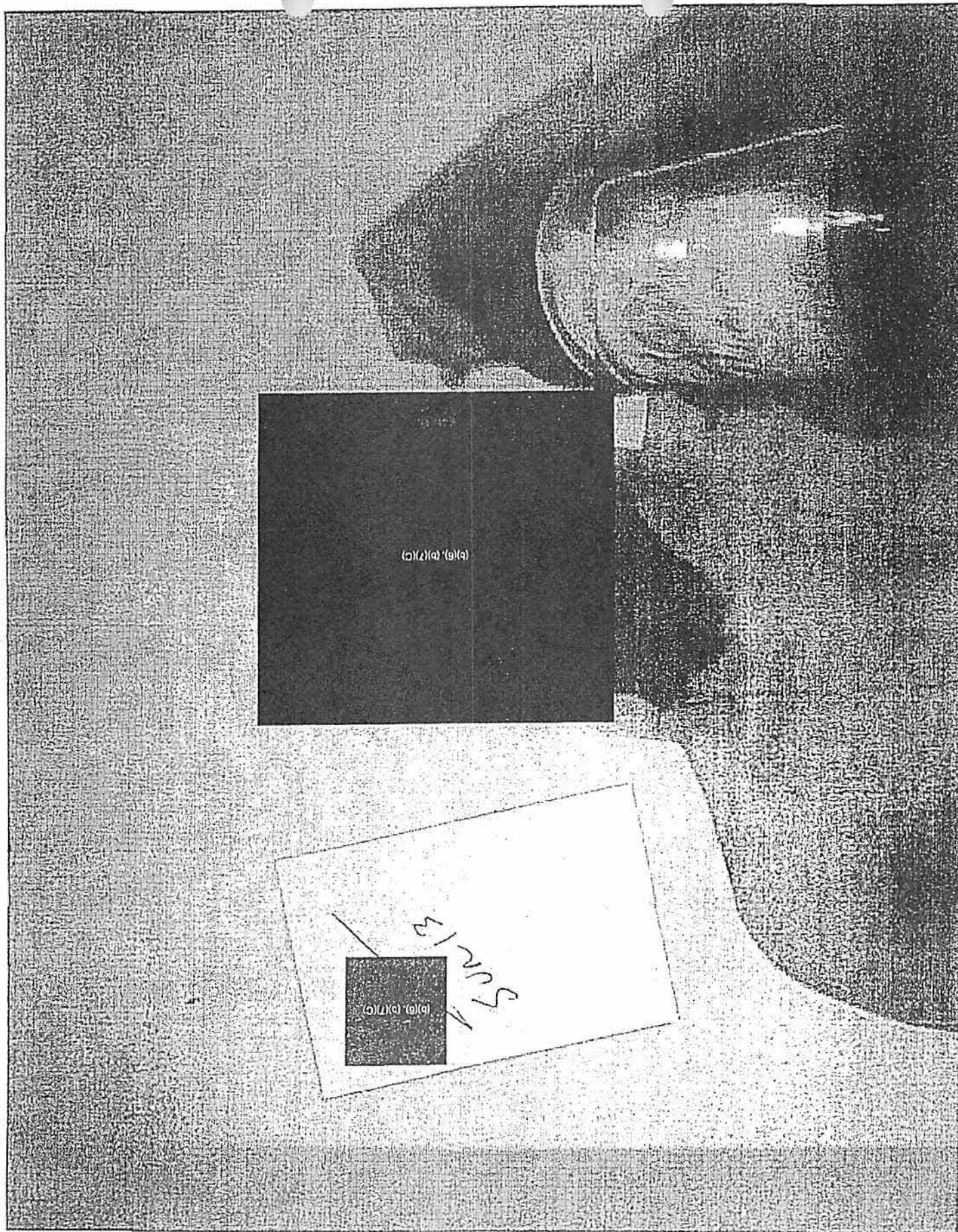
Philip T. Miller
Field Office Director
New Orleans Field Office

OCT 19 2010

Date

(b)(6), (b)(7)(C)



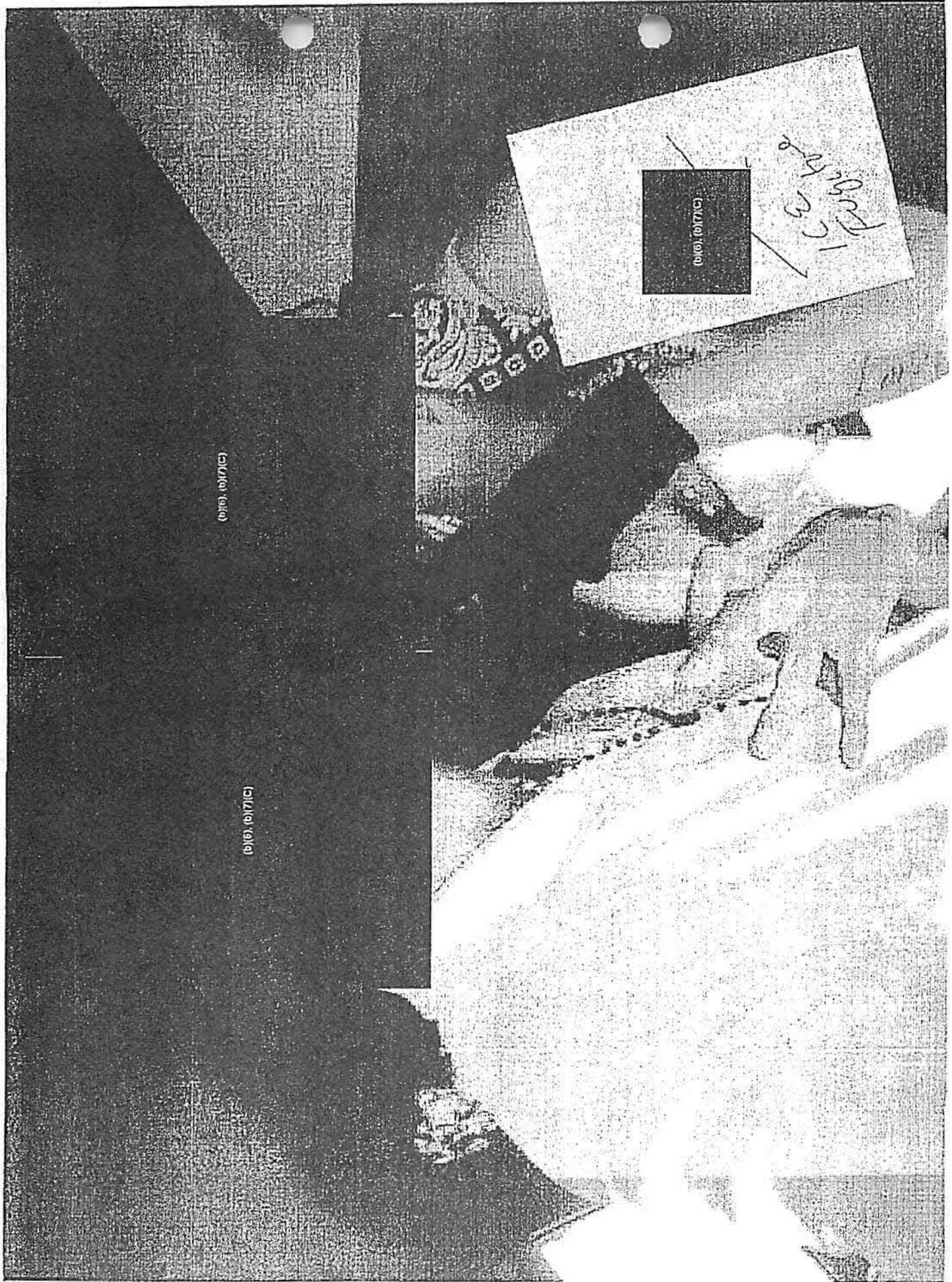


(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

SLC
5/12/13



(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(5), (b)(7)(C)

From: (b)(5), (b)(7)(C)
 Sent: Tuesday, October 19, 2010 8:13 AM
 To: (b)(5), (b)(7)(C)
 Subject: FW:
 Follow Up Flag: Follow up
 Flag Status: Red

Girl supposed to associated with (b)(5), (b)(7)(C) Too many apts related to her.

(b)(5), (b)(7)(C)

Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642 (Cell)
 615-316 (b)(5) (Office)



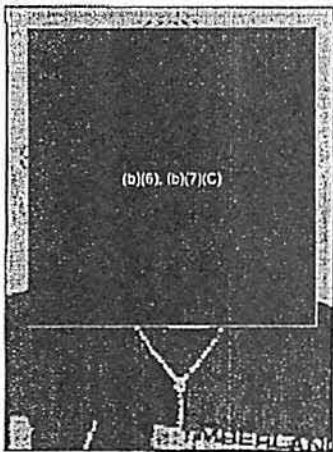
From: (b)(5), (b)(7)(C)
 Sent: Monday, October 18, 2010 5:15 PM
 To: (b)(5), (b)(7)(C)
 Subject: Re:

(b)(7)(c), (b)(7)(f), (b)(5), (b)(7)(c)

Sent from my Verizon Wireless BlackBerry

From: (b)(5), (b)(7)(C)
 Date: Fri, 15 Oct 2010 13:17:30 -0400
 To: (b)(5), (b)(7)(C)
 Subject:

(b)(5), (b)(7)(C), (b)(7)(e), (b)(7)(f)



(b)(6), (b)(7)(C)

Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (Cell)
615-316- (b)(6) (Office)



4/27/2011

ICE Rule26 00091
— ICE.2014-FOIA-01578.000196

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 19, 2010 2:34 PM
To: (b)(6), (b)(7)(C)
Subject: HSI, METRO PD AND FOT OP 10-20-2010
Importance: High
Follow Up Flag: Follow up
Flag Status: Red
Attachments: ClairmontAptOpPlan 10-20-10.doc; DRO annex to OI OP PLAN 10-20-2010.DOC

All,

We are tentatively scheduled for shift work tomorrow from (b)(7)e. All work hours after (b)(7)e hrs will be worked as AVO. Attached, please find a copy of the HSI Op Plan and the ERO Addendum. I have not received an approved version of the Op Plan or of the Addendum, as of this writing. If you do not hear from me; report at (b)(7)e hrs tomorrow, 10/20/2010. DO (b)(6), (b)(7)(C) is the ERO Lead on this case/op. Review both attachments.

Thank You,

(b)(6), (b)(7)(C)

Supervisor Fugitive Operations
DHS/ICE/ERO
New Orleans Field Office
Nashville Sub-Office
(615) 316- (b)(6) desk
(615) 642- (b)(6) Blackberry

4/27/2011

ICE_Rule26_00082
ICE-2014-FOIA-01578-000497



U.S. Immigration
and Customs
Enforcement

ENFORCEMENT OPERATION PLAN

ICE Office: RAC Nashville, Tennessee	Case Number: (b)(7)(c)
Case Agent: (b)(6), (b)(7)(C)	Contact Number(s): 615-566 (b)(6)
ICE Supervisor: (b)(6), (b)(7)(C)	Contact Number(s): 615-533 (b)(6)
Title 21 Investigation: ☐ Yes (IF YES, DEA NOTIFICATION PAGES MUST BE COMPLETED) ☒ No (IF NO, DO NOT SUBMIT DEA NOTIFICATION PAGES)	
Operation Type: ☐ Controlled Delivery ☐ Search Warrant Execution ☐ Arrest Warrant Execution ☐ Flash Roll	☐ Surveillance ☐ U/C Meeting ☒ Other Knock and Talk
Violations/Charges: TN State Violations / 8 USC 1326 / 18 USC 922(g)	
Date/Time of Operation: 10/20/2010 (b)(7)(c) hours	
Location of Operation: Clairmont Apartments, 1019 Patricia Drive, Nashville, TN 37217	
Briefing Location: ICE Fugitive Operations Team Office, Nashville, TN	
Staging Location: ICE Fugitive Operations Team Office, Nashville, TN	
Address of Target Location: Clairmont Apartments, 1019 Patricia Drive, Nashville, TN	
Type of Premises: Apartment Complex	
Description of Premises: Multi-unit, two story, apartment complex	
Conveyance Type: N/A	
Type/Quantity of Contraband Involved: N/A	
Name of AUSA Assigned: John Webb	Office: Middle District of Tennessee
Telephone Number: 615-736 (b)(6)	Blackberry/Cell Number: N/A

Summary of Investigation: (provide a brief description of the investigation)

Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, (b)(6), (b)(7)(C) Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F)

(b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

Operational Objectives: (detail the action planned and the anticipated outcome)

HSI, ICE/FOT, and Metro Gang Unit will conduct knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. Metro Gang will make arrests for any state violations discovered during the knock and talk operation. HSI, along with ICE/FOT, will assist Metro Gang with the identification of any foreign nationals at the residences. HSI and ICE/FOT may also make administrative arrests of foreign nationals, specifically street gang members and their associates.

SUSPECT INFORMATION: (Attach additional information if more than one suspect)

Name of Suspect: N/A		Date of Birth (DOB): N/A
Address of Suspect: N/A		
Physical Description: N/A		
Vehicle(s): N/A		
History of Violence or Weapons: N/A		
Prior Criminal History: N/A		
☐ US Citizen	☒ Non-US Citizen	
Immigration Status and A-Number (if known): N/A		
Other Pertinent Information: N/A		
Photo Available	☐ Yes ☒ No	

UNDERCOVER AGENT: (Attach additional information if more than two U/C)

Primary U/C: No Undercover

Secondary U/C: No Undercover

☐ Other: .

Name of U/C: N/A

Physical Description: N/A

Pager/Cellular Phone Number(s): N/A

U/C Vehicle: N/A

Distress Code

Arrest Signal

Radio Channels

Audio: N/A

Audio: N/A

Primary: B1 TAC3

Visual:

Visual:

Secondary:

Mobile Phone Numbers:

Detective (b)(6), (b)(7)(C) Metro Gang Unit

615-509- (b)(6)

Sector Phone Number: 1-800-973 (b)(7)(e)

Local Police Notified?

☒ Yes☐ No

Name of P.D.:

Metropolitan Nashville Police
Department

P.D. Location & Phone:

615-509-3742

Air Support To Be Utilized: ☐ Yes ☒ No

Type of Aircraft: N/A

Air Support Instructions: N/A

Nearest Hospital:

Name: Vanderbilt Medical Center

Street: 1211 Medical Center Drive

City, St: Nashville, TN 37232

Phone: 615-322-5000

PERSONNEL ASSIGNMENTS:

Assignments:

(b)(7)e

Name:

Call Sign:

Assignments:

1.

2.

3.

4.

5.

6.

7.

(b)(6), (b)(7)(C)

(b)(7)e

8. ICE/Fugitive Operations Team -

(b)(7)e

9. Metro Nashville Police Gang

Unit -

(b)(7)e

10.

11.

Prisoner Processing Location: 247 Venture Circle, Nashville, TN

Evidence To Be Transported: N/A

Equipment Required: Identifiable ICE/ POLICE clothing, Weapon, Flashlight

Attire: Rough Duty

Hazards: Apartments of suspected criminal street gang members - possibly weapons and/or animals.

Report Assignments	
Name:	Assignment:
(b)(6), (b)(7)(C)	ROI
	Select One
	Select One
	Select One
	Select One
	Select One
Additional Information: HSI, ICE/FOT, and Metro Gang will brief at the ICE/FOT office prior to the knock and talk operation at the Clairmont Apartments. (b)(7)(e) each consisting of (b)(7)(e) HSI agents, (b)(7)(e) ICE/FOT officers, and (b)(7)(e) Metro Gang detectives, will conduct knock and talks on four apartments in the complex. Metro Gang will make arrests for violations of state law discovered during the knock and talk operation. HSI and ICE/FOT may make administrative arrests of foreign national gang members. Any individuals administratively arrested by HSI and/or ICE/FOT will be transported to the Venture Circle office for processing. HSI will handle any federal criminal prosecutions relating to the operation.	
Approval(s): (if required)	
Signature/Title	Select One Signature/T
	(b)(6), (b)(7)(C)
cc: Case File Sector DEA (if applicable) Title 21 Operation Plan Log (if applicable)	

1/15/10 10/18/10

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 19, 2010 2:54 PM
To: (b)(6), (b)(7)(C)
Subject: RE: HSI OP PLAN SIGNATURE PAGE - APPROVED
Importance: High
Follow Up Flag: Follow up
Flag Status: Red
Attachments: ClairmontAptOpPlan 10-20-10 SIGNATURE PAGE.pdf

BETTER FORMAT!!

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 19, 2010 2:47 PM
To: (b)(6), (b)(7)(C)
Subject: HSI OP PLAN SIGNATURE PAGE - APPROVED
Importance: High

See attached signature page for HSI Op Plan. Still waiting on the Addendum approval by FOD.

(b)(6), (b)(7)(C)

4/27/2011



U.S. Immigration
and Customs
Enforcement

ENFORCEMENT OPERATION PLAN

ICE Office: RAC Nashville, Tennessee	Case Number: (b)(7)(C)
Case Agent: (b)(6), (b)(7)(C)	Contact Number(s): 615-566 (b)(6)
ICE Supervisor: (b)(6), (b)(7)(C)	Contact Number(s): 615-533 (b)(6)
Title 21 Investigation: ☐ Yes (IF YES, DEA NOTIFICATION PAGES MUST BE COMPLETED) ☒ No (IF NO, DO NOT SUBMIT DEA NOTIFICATION PAGES)	
Operation Type: ☐ Controlled Delivery ☐ Search Warrant Execution ☐ Arrest Warrant Execution ☐ Flash Roll	☐ Surveillance ☐ U/C Meeting ☒ Other Knock and Talk
Violations/Charges: TN State Violations / 8 USC 1326 / 18 USC 922(g)	
Date/Time of Operation: 10/20/2010 1700 hours	
Location of Operation: Claimont Apartments, 1019 Patricia Drive, Nashville, TN 37217	
Briefing Location: ICE Fugitive Operations Team Office, Nashville, TN	
Staging Location: ICE Fugitive Operations Team Office, Nashville, TN	
Address of Target Location: Claimont Apartments, 1019 Patricia Drive, Nashville, TN	
Type of Premises: Apartment Complex	
Description of Premises: Multi-unit, two story, apartment complex	
Conveyance Type: N/A	
Type/Quantity of Contraband Involved: N/A	
Name of AUSA Assigned: (b)(6), (b)(7)(C)	Office: Middle District of Tennessee
Telephone Number: 615-736 (b)(6)	Blackberry/Cell Number: N/A

Summary of Investigation: (provide a brief description of the investigation)

Metropolitan Nashville Police (Metro) have received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, (b)(6), (b)(7)(C) Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(F)

(b)(6), (b)(7)(C), (b)(7)(F) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity (b)(6), (b)(7)(C)

Operational Objectives: (detail the action planned and the anticipated outcome)

HSI, ICE/FOT, and Metro Gang Unit will conduct knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. Metro Gang will make arrests for any state violations discovered during the knock and talk operation. HSI, along with ICE/FOT, will assist Metro Gang with the identification of any foreign nationals at the residences. HSI and ICE/FOT may also make administrative arrests of foreign nationals, specifically street gang members and their associates.

SUSPECT INFORMATION: (Attach additional information if more than one suspect)

Name of Suspect: N/A		Date of Birth (DOB): N/A
Address of Suspect: N/A		
Physical Description: N/A		
Vehicle(s): N/A		
History of Violence or Weapons: N/A		
Prior Criminal History: N/A		
☐ US Citizen	☒ Non-US Citizen	
Immigration Status and A-Number (if known): N/A		
Other Pertinent Information: N/A		
Photo Available	☐ Yes ☒ No	

UNDERCOVER AGENT: (Attach additional information if more than two U/C)		
Primary U/C: No Undercover		Secondary U/C: No Undercover
☐ Other:		
Name of U/C: N/A		
Physical Description: N/A		
Pager/Cellular Phone Number(s): N/A		
U/C Vehicle: N/A		
Distress Code Audio: N/A Visual:	Arrest Signal Audio: N/A Visual:	Radio Channels Primary: B1 TAC3 Secondary:
Mobile Phone Numbers: Detective: (b)(6), (b)(7)(C) Metro Gang Unit 615-509-(b)(6)		
Sector Phone Number: 1-800-973-(b)(7)(e)		
Local Police Notified? ☒ Yes ☐ No	Name of P.D.: Metropolitan Nashville Police Department	P.D. Location & Phone: 615-509-3742
Air Support To Be Utilized: ☐ Yes ☒ No		
Type of Aircraft: N/A		
Air Support Instructions: N/A		
Nearest Hospital: Name: Vanderbilt Medical Center Street: 1211 Medical Center Drive City, St: Nashville, TN 37232 Phone: 615-322-5000		

PERSONNEL ASSIGNMENTS:

Assignments:

(b)(7)e

Name:

Call Sign:

Assignments:

1.

2.

3.

4.

(b)(6) (b)(7)(C)

5.

6.

7.

(b)(7)e

8. ICE/Fugitive Operations Team -

(b)(7)e

9. Metro Nashville Police Gang

Unit - (b)(7)e

10.

11.

Prisoner Processing Location: 247 Venture Circle, Nashville, TN

Evidence To Be Transported: N/A

Equipment Required: Identifiable ICE/ POLICE clothing, Weapon, Flashlight

Attire: Rough Duty

Hazards: Apartments of suspected criminal street gang members - possibly weapons and/or animals.

Report Assignments	
Name:	Assignment:
(b)(6), (b)(7)(C)	ROI
	Select One
	Select One
	Select One
	Select One
	Select One
Additional Information: HSI, ICE/FOT, and Metro Gang will brief at the ICE/FOT office prior to the knock and talk operation at the Clairmont Apartments. (b)(7)(e) each consisting of (b)(7)(e) HSI agents, (b)(7)(e) ICE/FOT officers, and (b)(7)(e) Metro Gang detectives, will conduct knock and talks on four apartments in the complex. Metro Gang will make arrests for violations of state law discovered during the knock and talk operation. HSI and ICE/FOT may make administrative arrests of foreign national gang members. Any individuals administratively arrested by HSI and/or ICE/FOT will be transported to the Venture Circle office for processing. HSI will handle any federal criminal prosecutions relating to the operation.	
Approval(s): (if required)	
Select One Signature/Title Select One Signature/Title	
cc: Case File Sector DEA (if applicable) Title 21 Operation Plan Log (if applicable)	

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)e
Operation Date(s): 10/20/2010 (b)(7)e hrs
Report Date: 10/19/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at (b)(7)e hours at the Nashville FOT Office. All members of the FOT have agreed to change their shift from (b)(7)e to (b)(7)e for participation in operation.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered once Nashville Metro PD has secured consent to enter a residence. NVL Fug/Ops will assist with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams that include HSI and Nashville Metro PD (see HSI Op Plan) during the briefing that will be held on 10/20/10. All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

Juvenile Issues

Due to the time and location, it is not anticipated that any juveniles will be encountered.

If a juvenile is apprehended, the primary or secondary juvenile coordinator will be contacted for placement.

Detainee Movement

Existing detention vans will be utilized to facilitate transport from arrest site to 247 Venture Circle, Nashville, TN for processing and to Davidson County Jail for detention.

Alien Property

Alien Property will not be received by ERO unless it is properly tagged and documented. Per New Orleans Field Office policy, any property not going with detained aliens will be

retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher Information for Detail

None

Contact Numbers

Address:
ICE RAC/Nashville
247 Venture Circle
Nashville, TN

Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	IEA	615-416-	
(b)(6), (b)(7)(C)	DO	504-329-	
(b)(6), (b)(7)(C)	DO	615-642-	
(b)(6), (b)(7)(C)	SDDO	615-642-	

APPROVING OFFICIAL

[Signature]

Phillip T. Miller
Field Office Director
New Orleans Field Office

OCT 19 2010

Date

DEPARTMENT OF HOMELAND SECURITY ICE		TECS ACCESS CODE (b)(7)D	
REPORT OF INVESTIGATION		PAGE 1	
TITLE: OPERATION COMMUNITY SHIELD FY-2011		CASE NUMBER (b)(7)D	
CASE STATUS: INIT RPT			
REPORT DATE 102210	DATE ASSIGNED 101310	PROGRAM CODE (b)(7)D	REPORT NO. 001
RELATED CASE NUMBERS:			
COLLATERAL REQ:			
TYPE OF REPORT: INVESTIGATIVE FINDINGS			
TOPIC: KNOCK AND TALK OPERATION - CLAIRMONT APARTMENTS			

SYNOPSIS:

Homeland Security Investigations (HSI) has partnered with the Metropolitan Nashville Police Gang Unit (Metro Gang) and the ICE Fugitive Operations Team (FOT) to conduct criminal investigations and other enforcement operations against transnational criminal street gangs in furtherance of Operation Community Shield. HSI, ICE/FOT, and Metro Gang are working together to identify violent, foreign national street gang members and their associates in the Nashville, Tennessee area. HSI will seek criminal prosecution of alien gang members, when applicable, and/or their removal from the United States. This case is opened to document the criminal and administrative arrests of transnational criminal street gang members in the Middle District of Tennessee.

This Report of Investigation (ROI) documents a knock and talk operation conducted with ICE/FOT and Metro Gang at the Clairmont Apartments, 1019 Patricia Drive, Nashville, Tennessee, on October 20, 2010.

DISTRIBUTION: RACNV SACNO	SIGNATURE: (b)(6), (b)(7)(C)	
	(b)(6), (b)(7)(C) SENIOR SPEC AGENT	
	APPROVED: (b)(6), (b)(7)(C)	
	(b)(6), (b)(7)(C) GRP SUPERVISOR	
ORIGIN OFFICE: NV, NASHVILLE, TN - RAC		TELEPHONE: 615 736 (b)(6), (b)(7)(C)
		TYPIST: (b)(6), (b)(7)(C)

~~OFFICIAL USE ONLY~~

~~THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE DEPARTMENT OF HOMELAND SECURITY, ICE. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERRED TO ICE HEADQUARTERS TOGETHER WITH A COPY OF THE DOCUMENT.~~

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 2
REPORT OF INVESTIGATION CONTINUATION	CASE NUMBER (b)(7)e
	REPORT NUMBER: 001

DETAILS OF INVESTIGATION:

Over the past few weeks, the Metropolitan Nashville Police Department (Metro) has received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the Nashville ICE Fugitive Operations Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)c, (b)(7)f were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)c, (b)(7)f

(b)(6), (b)(7)c, (b)(7)f
HSI, ICE/FOT, and Metro Gang identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang identified four apartments associated with the criminal activity: (b)(6), (b)(7)(C)

On October 20, 2010, HSI, ICE/FOT, and Metro Gang conducted knock and talks at apartments (b)(6), (b)(7)(C) in an effort to identify street gang members and their associates in the complex. HSI, along with ICE/FOT, assisted Metro Gang with the identification of foreign nationals at the residences. HSI and ICE/FOT made administrative arrests of twenty (20) individuals for immigration violations. Three of the individuals were identified as members / associates of the Surenos Locos Criminales. They were (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C).

All individuals administratively arrested by HSI and/or ICE/FOT were transported to the HSI Venture Circle office for processing.

Total Administrative Arrests: 20

Gang Members / Associates: 3 Surenos Locos Criminales (SLC), a SUR 13 clique

Processing Disposition: NTAs (13), B&Bs (3), Reinstatements (3),
BIA Appeal Pending (1) Released on an order of supervision by ICE/FOT

Nationalities: Honduras (9), Mexico (7), Guatemala (4)

SAS: (b)(7)e

Investigation continues.

102210

TECS II - LIST OF RELATED RECORDS

PAGE 1
(b)(7)e

21 RECORDS ARE RELATED TO BASE RECORD
ROI CNV (b)(6), (b)(7)(C) P 102210

(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	J W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	O W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	E W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	A W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	A W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				
(b)(7)e	(b)(6), (b)(7)(C)	W M	(b)(6), (b)(7)(C)	SUB-SOURCE
SA SUSPECT, ALIEN				

102210

TECS II - LIST OF RELATED RECORDS

PAGE 2

(b)(7)e

21 RECORDS ARE RELATED TO BASE RECORD

ROI CNV (b)(6), (b)(7)(C) P 102210

(b)(7)e

(b)(6), (b)(7)(C)

W M (b)(6), (b)(7)(C)

SA SUSPECT, ALIEN

SUB-SOURCE

(b)(7)e

(b)(6), (b)(7)(C)

J W M (b)(6), (b)(7)(C)

SA SUSPECT, ALIEN

SUB-SOURCE

(b)(7)e

(b)(6), (b)(7)(C)

M W M (b)(6), (b)(7)(C)

SA SUSPECT, ALIEN

SUB-SOURCE

(b)(7)e

(b)(6), (b)(7)(C)

W M (b)(6), (b)(7)(C)

SA SUSPECT, ALIEN

SUB-SOURCE

(b)(7)e

CASE CNV (b)(6), (b)(7)(C)

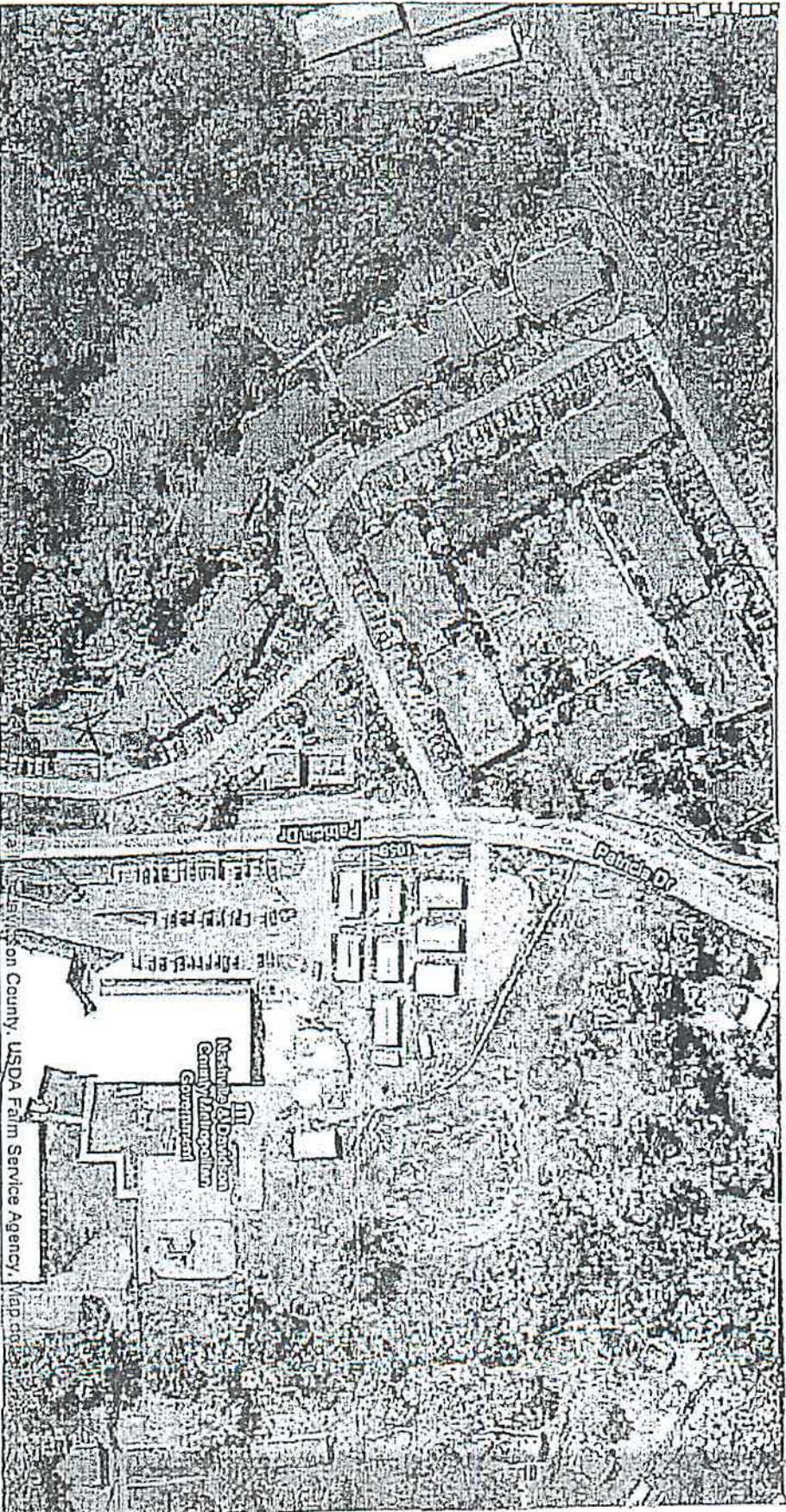
P 101310

OPERATION COMMUNITY SHIELD FY-2011

Google maps

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[Print](#) [Send](#) [Link](#)



Photos from Panoramio

<http://maps.google.com/maps?hl=en&q=1019%20patricia%20ln%2C%20nashville&safe=on&um=1&ie=UTF-8&sa=N&iab=w> 10/18/2010

Apprehension Date Between 10/20/2010 and 10/20/2010

Apprehension Method: All

Report Number	Name of Subject	Sex	Adult / Juvenile	Status	Entry Landmark	Arrest Landmark	Arrest Method	Status When Found	Time In U.S.	Port of Entry	Alien File Number	Disposition	Nationality	Remarks - Principal / Smuggled	Apprehending Officer Name(s)
	(b)(7)(C)	M	34	PWAM	MACON	CLC	II	OVER1	UNK	UNK	(b)(6), (b)(7)(C)	WANTA	MEXIC		(b)(6), (b)(7)(C)
		M	29	PWAM	MAURY	CLC	II	OVER1	UNK	UNK		WANTA	MEXIC		
		M	44	LPR	DCCBAC	CST	II	OVER1	UNK	UNK		NTA/DT	EGYPT		
		M	34	PWAM	DCSCEN	CST	II	AE	UNK	UNK		WANTA	MEXIC		
		M	19	PWAM	ROBERT	CLC	II	AE	UNK	UNK		REINST	MEXIC		
		M	39	LPR	DAVIDS	287	II	NA	UNK	UNK		NAR	SWEDE		
		M	30	PWAO	FUGOPS	NCA			UNK	UNK		REINST	HONDU		
		M	28	PWAO	FUGOPS	NCA	SE	OVER1	UNK	UNK		NTA/DT	GUATE		
	(b)(6), (b)(7)(C)	M	18	PWAO	FUGOPS	L	IT	OVER1	UNK	UNK	(b)(6), (b)(7)(C)	B	HONDU		(b)(6), (b)(7)(C)
		M	40	PWAO	FUGOPS	L	TS	AE	UNK	UNK		B	HONDU		
		M	23	PWAO	FUGOPS	L	IT	OVER1	UNK	UNK		B	HONDU		
		M	28	PWAO	FUGOPS	NCA	SE	OVER1	UNK	UNK		NTA/DT	GUATE		
		M	22	PWAO	DOUGEN	NSVGEN	L	IT	OVER1	DOU		WANTA	GUATE		
		M	31	PWAO	FUGOPS	NCA			UNK	UNK		REINST	HONDU		

Illy Apprehension Log (OARSLOG.RDT) (Rev. 10/1/03)

— Sensitive But Unclassified —

Apprehension Date Between 10/20/2010 and 10/20/2010

Apprehension Method: All

Agent Number	Name of Subject	Sex	Adult/Juvenile	Status at Entry	Entry Landmark	Arrest Landmark	Arrest Method	Status When Found	Time In U.S.	Port of Entry	Alien File Number	Disposition	Nationality	Remarks - Principal/Smuggled	Apprehending Officer Name(s)
	(b)(6), (b)(7)(C)	M	26	PWAO	ELPOEN	NSVGEN	L	IT	OVER1	ELP		WANTA	HONDU		
	(b)(6), (b)(7)(C)	M	51	PWAM		FUGOPS	NCA			UNK		WANTA	MEXIC		
	(b)(6), (b)(7)(C)	M	34	PWAM		NSVGEN	L	TS	OVER1	SYS		WANTA	MEXIC		
	(b)(6), (b)(7)(C)	M	42	PWAM		FUGOPS	NCA	TS	AE	UNK		NTA/DT	MEXIC		
	(b)(6), (b)(7)(C)	M	19	PWAO		FUGOPS	L	IT	OVER1	UNK		REINST	HONDU		
	(b)(6), (b)(7)(C)	M	28	PWAO		FUGOPS	NCA			UNK		WANTA	GUATE		
	(b)(6), (b)(7)(C)	M	30	PWAM			L	TS	AE	NOG		WANTA	MEXIC		
	(b)(6), (b)(7)(C)	M	32	PWAM		NSVGEN	O	TS	OVER1	EGP		WANTA	HONDU		
	(b)(6), (b)(7)(C)	M	26	PWAM		FUGOPS	NCA			UNK		WANTA	MEXIC		
	(b)(6), (b)(7)(C)	M	31	PWAM		FUGOPS	NCA	TS	AE	UNK		NTA/DT	MEXIC		
	(b)(6), (b)(7)(C)	M	30	PWAM		ELPOEN	NSVGEN	L	TS	OVER1	ELP	WANTA	MEXIC		

Total Subjects Apprehended: 25

Subjects Total: 25

Deportable Total: 23

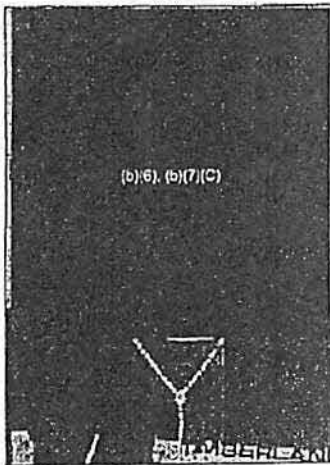
Non Deportable Total: 2

Unknown Total: 2

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Friday, October 15, 2010 11:52 AM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: (b)(6), (b)(7)(C) -warrant (assoc) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) was said to be associated to (b)(6), (b)(7)(C) in (b)(6), (b)(7)(C) at Claiborne. She has aka (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) Alien # (b)(6), (b)(7)(C) from Guatemala and is an ICE fugitive as well. Looks like she
 is related to (b)(6), (b)(7)(C) DL (b)(6), (b)(7)(C) (b)(6), (b)(7)(C). He is a NatZ US Citizen.



(b)(6), (b)(7)(C)

*****WARNING - THE DISPLAYED IS A NCIC WANTED PERSON RECORD. THIS
 INFORMATION IS ONLY PROVIDED TO THE PORTAL ON A WEEKLY BASIS. DO NOT
 SEARCH, DETAIN, OR ARREST BASED SOLELY ON THIS RECORD. CONTACT ENTERING
 AGENCY TO CONFIRM STATUS AND TERMS OF WARRANT*****

Originating Agency

Warrant #: (b)(6), (b)(7)(C)

Date of
 Violation: 01/14/2008

Notes:

TENNESSEE PICK UP ONLY, WARRANT (b)(6), (b)(7)(C) IS A
 MISDEMEANOR VIOLATION OF PROBATION ON A MISDEMEANOR
 CITATION FOR DRIVING ON A SUSPENDED LICENSE, BOND \$2500, MNU
 TN SID, HEIGHT (b)(6), (b)(7)(C) WEIGHT (b)(6), (b)(7)(C) SUBJECT IS OF HISPANIC
 ETHNIC ORIGIN AND PLACE OF BIRTH MAY BE GUATEMALA

10/29/2010

ICE Rule26 00113
 ICE.2014-FOIA-01578.000218

Gender: F
Race: White
Height: [REDACTED]
Weight: (b)(6), (b)(7)(C)
Hair Color: [REDACTED]
Date of Birth: (b)(6), (b)(7)(C)
SSN: (b)(6), (b)(7)(C)
State ID: (b)(6), (b)(7)(C)
FBI#: (b)(6), (b)(7)(C), (b)(7)(D)
DL #: (b)(6), (b)(7)(C)
DL State: TN
License Year
of Expiration: 2008
Other: (b)(6), (b)(7)(C)
NCIC #: (b)(7)(D)
Agency #:

No Information Available

Agency Name:

SMYRNA PD

Case #:

(b)(6), (b)(7)(C)

The agency responsible for entering this information may be different from the agency listed above.

(b)(6), (b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (b)(6) (Cell)
615-316- (b)(6) (Office)



10/29/2010

ICE Rule26 00114
ICE.2014-FOIA-01578.000219

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Wednesday, October 27, 2010 12:26 PM
To: (b)(6), (b)(7)(C)
Subject: More gang members

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, October 04, 2010 2:40 PM
To: (b)(6)
Subject: FW: ICE

Another lead forwarded to me previously stated that apts (b)(6), (b)(7)(C) had MS-13 connection. (b)(6) was said to potentially contain a lot of guns.

This is dated info (several weeks), but figured I would pass it along as well.

(b)(6), (b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (b)(6) (Cell)
615-316- (b)(6) (Office)



From: (b)(6), (b)(7)(C)
Sent: Monday, October 04, 2010 12:39 PM
To: (b)(6)
Subject: ICE

(b)(6), (b)(7)(C) were forwarded to me as gang affiliated apts and known to possess multiple firearms.

(b)(6), (b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
615-642- (b)(6) (Cell)
615-316- (b)(6) (Office)



(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, October 06, 2010 7:30 AM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: RE: (b)(6), (b)(7)(C) A# is his Alien reg #

10-4 on BP guy, just give me heads up on it, we can get possibly 4 or more of us to help out.

Also, (b)(6), (b)(7)(C) was driving up from Atlanta wanting to sit down with us. I told her I could today, but she would have to check with you on your availability. (b)(6), (b)(7)(C) called me back yesterday and said if (b)(6), (b)(7)(C) is going by or has ID with the name (b)(6), (b)(7)(C)

These are some names I found possibly assoc with them and below is (b)(6), (b)(7)(C) email with lease info.

(b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (ssn looks like possibly belongs to deceased person),
 other names: (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Tuesday, October 05, 2010 4:18 PM
 To: (b)(6), (b)(7)(C)
 Subject: RE:

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) is not a gang concern.

(b)(6), (b)(7)(C)
 Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642 (Cell)
 615-316 (b)(6) (Office)



From: (b)(6), (b)(7)(C)
 Sent: Tuesday, October 05, 2010 6:12 PM
 To: (b)(6), (b)(7)(C)
 Subject: RE: (b)(6), (b)(7)(C) A# Is his Alien reg #

Yep that's him...I will let you know when we are going to execute the warrant in case you guys want to come.

Detective (b)(6), (b)(7)(C)
 Metro Nashville Police Department
 Specialized Investigation Division
 Intelligence Section /Gang Unit
 SWAT
 Office 782 (b)(6)
 Mobile 509 (b)(6)

From: (b)(6), (b)(7)(C)
 Sent: Tuesday, October 05, 2010 3:39 PM
 To: (b)(6), (b)(7)(C)
 Subject: RE: (b)(6), (b)(7)(C) A# Is his Alien reg #

Aka (b)(6), (b)(7)(C), Aka (b)(6), (b)(7)(C), deported 11/2006

Encounters Print

Encounters for Case # (b)(6), (b)(7)(C) Please select an Encounter to view detailed information.

Subject ID	A-Number	Last Name	First Name	COB	Age	Entry Date	Apprehend	Processing Disposition	Unlink
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Mexico	22	-/- /1990	09/25/2006	Warrant of Arrest/Notice to Appear	Unlink From Person

A-Number: (b)(6), (b)(7)(C)

Subject ID (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)

NOTICE: The information below has been captured from EABM (ENFORCE) and cannot be edited within EARM; to edit this information please use EABM (ENFORCE).

Biographical

Alien Encounter

4/27/2011

Information	Encounter Information	Event/Incident Information	Photo
FINS: (b)(6), (b)(7)(C), (b)(7)(D)	POE: UNKNOWN	Event ID: (b)(7)(E)	
Sex: M	Apprehension	Title: Primary	
DOB: (b)(6), (b)(7)(C)	Location: Nashville, TN	subject: (b)(6), (b)(7)(C)	
Age at Encounter: 18	Entry Date: --/--/1990	(b)(6), (b)(7)(C)	
Current	Entry Status: PWA	Event Date: 09/25/2006 08:57 AM	
Age: 22	Mexico	Type: CIN - Criminal	
COB:	Admission Class: Apprehension	Lead Type:	
Mexico	Date: 09/25/2006	Operation:	
COC:	Processing		
Mexico	Disposition: Warrant of Arrest/Notice to Appear		
Marital Status: Single	Aggravated Felon		
	Status: N - Not an Aggravated Felon		
	Mandatory Detention: N		

I-213 Narrative:

Operation Community Shield. Subject is an admitted Brown Pride (BP) gang member. Subject is a native and citizen of Mexico who claims he last entered the US in 1990 at an unknown place in an unknown manner. Subject does not recall how he entered as he was approx 3 years old and the phone number provided by him for his parents (615-582 (b)(6)) is not working. Record checks on subject and his parents fail to reflect any legal entry/status. He does not appear to be eligible for relief under the INA as amended. Det. (b)(6), (b)(7)(C) of the Metro Nashville SID was present during the interview. He was encountered at the Metro Nashville Davidson County TN jail in Nashville, TN after he was arrested on charges of Forgery, felony possession of drugs and evading arrest. On 09/21/2006 he was convicted in the Criminal Court of Davidson County Tennessee of Felony Evading Arrest in a Motor Vehicle in violation of TCA 39-16-603 and sentenced to 1 year. Cert. Copies of J&C are in the file. Equities in the United States: Subject claims his mother and father in the US as well as 4 USC sisters. He has a USC child- (b)(6), (b)(7)(C) (8 mo old) who is in the custody of he mother, (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) Nashville, TN. Scars/Marks/Tattoos: (b)(6), (b)(7)(C) Other Agencies involved: Metro Nashville SID
Criminal History: The other charges were dismissed. He is amenable to removal under the following sections of the INA as amended: EWI Section 212(a)(6)(A) CIMT Section 212(a)(2)(A)(i)(I)

This is all the info I found in database checks.

If he is back, he can be charged federally under 8 USC 1326. After arrest, 287g program in Davidson would put immigration detainer on him and after local/state charges are adjudicated, he would roll over for federal prosecution. Due to crim hist and gang affiliation, US Atty office should definitely prosecute him. He would be looking at a few years in federal pen at least before being deported again.

(b)(6), (b)(7)(C)
Fugitive Operations
DHS/ICE
Nashville, TN
615-642 (Cell)
615-316 (b)(6) (Office)



From: [REDACTED] (b)(6), (b)(7)(C)
Sent: Tuesday, October 05, 2010 2:34 PM
To: [REDACTED] (b)(6), (b)(7)(C)
Subject: [REDACTED] (b)(6), (b)(7)(C)

[REDACTED] (b)(6), (b)(7)(C)

In the next week, we will be serving a search warrant at the residence of [REDACTED] (b)(6), (b)(7)(C). DL# [REDACTED] (b)(6), (b)(7)(C). He is a Brown Pride gang member that we got an anonymous complaint on several months ago. The complaint stated that he was charged with murder, deported, and paid \$2000 to return to the U.S... I don't know if he was deported or not, but he does have Homicide in his criminal history....can you see if you guys have anything on him...

Detective [REDACTED] (b)(6), (b)(7)(C)
Metro Nashville Police Department
Specialized Investigation Division
Intelligence Section /Gang Unit
SWAT
Office 782 [REDACTED] (b)(6)
Mobile 509- [REDACTED] (b)(6)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, October 06, 2010 9:48 AM
 To: (b)(6), (b)(7)(C)
 Subject: Re: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Sent from my Verizon Wireless BlackBerry

From: (b)(6), (b)(7)(C)
 Date: Wed, 6 Oct 2010 08:44:33 -0400
 To: (b)(6), (b)(7)(C)
 Subject: FW: (b)(6), (b)(7)(C)

This is the individual I was looking for

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

His name is (b)(6), (b)(7)(C) (Guatemala) (b)(6), (b)(7)(C) should have (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642- (b)(6) (Cell)
 615-316- (b)(6) (Office)



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(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 07, 2010 5:28 PM
 To: (b)(6), (b)(7)(C)
 Subject: info from Clairmont
 Follow Up Flag: Follow up
 Flag Status: Red

(b)(5), (b)(7)(C)

The following information was found via use of (b)(7)(e)

(b)(6), (b)(7)(C)

(DL# (b)(6), (b)(7)(C) has (b)(7)(e) in his name in apartments (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(DL# (b)(6), (b)(7)(C) has (b)(7)(e) in his name in Apt (b)(6), (b)(7)(C)

Security gave me two vehicle tag #s that he says are involved also:

(b)(6), (b)(7)(C)

Security said a white male has dropped off several Hispanics near L6 in the complex in this vehicle

The vehicle comes back to a (b)(6), (b)(7)(C) (M/W)

(b)(6), (b)(7)(C)

Vehicle comes back to (b)(6), (b)(7)(C)

ICE
signature
not sure

(b)(6), (b)(7)(C)

Detective (b)(6), (b)(7)(C)
 Metro Nashville Police Department
 Specialized Investigation Division
 Intelligence Section /Gang Unit
 SWAT
 Office 782 (b)(6)
 Mobile 509- (b)(6)

4/27/2011

ICE Rule26 00122
 TCE.2014-FOIA-01578.000227

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Friday, October 08, 2010 5:39 PM
 To: (b)(6), (b)(7)(C)
 Subject: RE: info from Clairmont
 Follow Up Flag: Follow up
 Flag Status: Red

that sounds good to me...I looked at the guy's picture and he doesn't look familiar so he might be a good one.

Detective (b)(6), (b)(7)(C)
 Metro Nashville Police Department
 Specialized Investigation Division
 Intelligence Section /Gang Unit
 SWAT
 Office 782 (b)(6)
 Mobile 50 (b)(6)

(b)(7)e, (b)(7)f, (b)(6), (b)(7)c

From: (b)(6), (b)(7)(C)
 Sent: Fri 10/8/2010 2:38 PM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: RE: info from Clairmont

(b)(6), (b)(7)(C) I want to get together on Tues sometime (you (b)(6), (b)(7)(C) (b)(7)e, (b)(7)f, (b)(6), (b)(7)c

(b)(7)e, (b)(7)f, (b)(6), (b)(7)c

Info from today: (b)(6), (b)(7)(C), (b)(7)e, (b)(7)f, (b)(6), (b)(7)c
 (b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), (b)(7)e, (b)(7)f

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Friday, October 15, 2010 11:52 AM
 To: (b)(6), (b)(7)(C)
 Cc: (b)(6), (b)(7)(C)
 Subject: (b)(6), (b)(7)(C) -warrant (assoc) (b)(6), (b)(7)(C)
 Follow Up Flag: Follow up
 Flag Status: Red

(b)(6), (b)(7)(C) was said to be associated to (b)(6), (b)(7)(C) in (b)(6), (b)(7)(C) at Claiborne. She has aka (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) Alien # (b)(6), (b)(7)(C) from Guatemala and is an ICE fugitive as well. Looks like she
 is related to (b)(6), (b)(7)(C) DL (b)(6), (b)(7)(C) He is a NatZ US Citizen.

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

*****WARNING - THE DISPLAYED IS A NCIC WANTED PERSON RECORD. THIS
 INFORMATION IS ONLY PROVIDED TO THE PORTAL ON A WEEKLY BASIS. DO NOT
 SEARCH, DETAIN, OR ARREST BASED SOLELY ON THIS RECORD. CONTACT ENTERING
 AGENCY TO CONFIRM STATUS AND TERMS OF WARRANT*****

Originating Agency

Warrant #: (b)(6), (b)(7)(C)

Date of
 Violation: 01/14/2008

TENNESSEE PICK UP ONLY, WARRANT (b)(6), (b)(7)(C) IS A
 MISDEMEANOR VIOLATION OF PROBATION ON A MISDEMEANOR

ICE Rule 26 00124
 -ICE.2014-FOIA-01578.000229

Notes: CITATION FOR DRIVING ON A SUSPENDED LICENSE, BOND \$2500, MNU
TN SID, HEIGHT (b)(6), (b)(7)(C), WEIGHT (b)(6), (b)(7)(C) SUBJECT IS OF HISPANIC
ETHNIC ORIGIN AND PLACE OF BIRTH MAY BE GUATEMALA

Gender: F

Race: [REDACTED]

Height: [REDACTED]

Weight: [REDACTED]

Hair Color: [REDACTED]

Date of Birth: [REDACTED]

SSN: [REDACTED]

State ID: [REDACTED]

FBI#: [REDACTED]

DL #: [REDACTED]

DL State: TN

**License Year
of Expiration:** 2008

Other: [REDACTED]

NCIC #: [REDACTED]

Agency #:

No Information Available

Agency Name:

SMYRNA PD

Case #:

[REDACTED]

The agency responsible for entering this information may be different from the agency listed above

[REDACTED]

Fugitive Operations

DHS/ICE

Nashville, TN

615-642- [REDACTED] (Cell)

615-316- [REDACTED] (Office)

4/27/2011

ICE Rule 26 00125
ICE 2014-FOIA-01578.000230

File No.	Name of Person	DOB	Nationality	Status (1)	Sex	Convictions
(b)(7)(C)	(b)(7)(C)	(b)(7)(C)	MEXIC	NTA	M	shoplift
			MEXIC	NTA	M	trespass
			MEXIC	T	M	NTA
			MEXIC	NTA	M	ewi sur 13
			MEXIC	NTA	M	Trespass
			MEXIC	NTA	M	ewi
			MEXIC	T	M	NTA & NO DL
			HONDU	871	M	871
			GUATE	NTA	M	EWI
			HONDU	BB	M	assault sur 13
			HONDU	NTA	M	ewi
			HONDU	871	M	reinstate sur 13
			GUATE	NTA	M	EWI
			GUATE	NTA	M	NTA 5000
			HONDU	871	M	ewi
			HONDU	NTA	M	NTA
			HONDU	Reinst	M	ewi sur 13
			GUATE	NTA	M	EWI
			HONDU	NTA	M	dwl sur 13
			HONDU	RELEASED APPEAL PENDING BIA	M	

INDIVIDUALS ARRESTED ON 10/20/2010 - JOINT OP WITH HSI AND NASHVILLE METRO PD
 TOTAL = 20
 RELEASED = 1
 IN ICE CUSTODY = 19

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Thursday, October 07, 2010 5:28 PM
 To: (b)(6), (b)(7)(C)
 Subject: (b)(7)e, (b)(7)f

Ryan and Lee,

The following information was found via use of (b)(7)e

(b)(7)e, (b)(7)f

(b)(6), (b)(7)(C)

DL

(b)(6), (b)(7)(C)

has (b)(7)e in his name in apartments

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(DL

(b)(6), (b)(7)(C)

has (b)(7)e in his name in

(b)(6), (b)(7)(C)

(b)(7)e, (b)(7)f

(b)(6), (b)(7)(C)

(b)(7)e, (b)(7)f

white male has dropped off several Hispanics near (b)(6) on the complex in this vehicle

The vehicle comes back to a (b)(6), (b)(7)(C) (M/W)

(b)(6), (b)(7)(C)

Vehicle comes back to (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Detective (b)(6), (b)(7)(C)

Metro Nashville Police Department
 Specialized Investigation Division
 Intelligence Section /Gang Unit
 SWAT
 Office 782 (b)(6)
 Mobile 509-

10/8/2010

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, October 06, 2010 7:30 AM
 To: (b)(6), (b)(7)(C) (MNPDP)
 Cc:
 Subject: RE: (b)(6), (b)(7)(C) A# is his Allen reg #

10-4 on BP guy, just give me heads up on it, we can get possibly (b)(7)(e) of us to help out.

Also, (b)(6), (b)(7)(C) was driving up from Atlanta wanting to sit down with us. I told her I could today, but she would have to check with you on your availability. (b)(6), (b)(7)(C) called me back yesterday and said in (b)(6), (b)(7)(C) is going by or has ID with the name (b)(6), (b)(7)(C).

These are some names I found possibly assoc with them and below is (b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

From: (b)(6), (b)(7)(C)
 Sent: Tuesday, October 05, 2010 4:18 PM
 To: (b)(6), (b)(7)(C)
 Subject: RE:

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C)

Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642 (b)(6) (Cell)
 615-316 (b)(6) (Office)



10/6/2010

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)

Sent: Tuesday, October 05, 2010 4:18 PM

To: (b)(6), (b)(7)(C)

Subject: RE:

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

(b)(6), (b)(7)(C), (b)(7)(e), (b)(7)(f)

From: (b)(6), (b)(7)(C)

Sent: Tue 10/5/2010 3:05 PM

To: (b)(6), (b)(7)(C)

Subject: RE:

Looking for (b)(6), (b)(7)(C), (b)(7)(e) We are definitely looking into everything.

(b)(6), (b)(7)(C)

Fugitive Operations

DHS/ICE

Nashville, TN

615-642- (Cell)

615-316- (Office)



10/6/2010

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, October 06, 2010 9:48 AM
 To: (b)(6), (b)(7)(C)
 Subject: Re: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Sent from my Verizon Wireless BlackBerry

From: (b)(6), (b)(7)(C)
 Date: Wed, 6 Oct 2010 08:44:33 -0400
 To: (b)(6), (b)(7)(C)
 Subject: FW: (b)(6), (b)(7)(C)

This is the individual I was looking for (b)(6), (b)(7)(C), (b)(7)(D)

(b)(6), (b)(7)(C), (b)(7)(D)

His name is (b)(6), (b)(7)(C) (Guatemala) (b)(6), (b)(7)(C) should have (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Fugitive Operations
 DHS/ICE
 Nashville, TN
 615-642- (b)(6) (Cell)
 615-316- (b)(6) (Office)



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10/6/2010

ICE Rule 26.00130
 ICE.2014-FOIA-04678.000235

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Monday, October 25, 2010 12:43 PM
To: Miller, Philip T
Subject: Re: Did we

Thanks

From: Miller, Philip T
To: (b)(6), (b)(7)(C)
Sent: Mon Oct 25 12:34:12 2010
Subject: Re: Did we

(b)(6), (b)(7)(C)

This is what (b)(6), (b)(7)(C) sent up last week:

This (HSI/ERO) enforcement operation (10/20/10) resulted in the arrest of twenty (20) individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. All violators were taken to the ICE Nashville Office for processing. One (1) subject was released; due to a pending appeal on an IJ Order of Removal and active immigration bond. Nineteen (19) remain in ICE custody, pending removal from the United States.

Here is a more detailed account:

- Joint Gang Operation HSI/ERO
- o 10/20/2010
- o Nashville, TN.
- o Gang Members/affiliated individuals
- o 4 targeted apartments at a large complex
- o Joint Op involving the Nashville Metro PD Gang Unit, Nashville HSI and FOT
- o Lead Agency is Nashville Metro PD
- o No Anticipated Media Impact
- o Pre-Operation Synopsis:

Metropolitan Nashville Police (Metro) received numerous complaints concerning criminal street gang activity at the Clairmont Apartments, 1019 Patricia Drive, Nashville, TN. Also, the ICE/Fugitive Operation Team (FOT) has encountered a number of ICE fugitives in the apartment complex. After a recent ICE/FOT operation in the complex, (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F) were threatened by young Hispanic males for their alleged cooperation with ICE/FOT. (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F) HSI, ICE/FOT, and Metro Gang have identified two active street gangs affiliated with SUR 13 in the complex: Surenos Locos Criminales (SLC) and Seven Oaks Park (7OP). HSI, ICE/FOT, and Metro Gang have identified four apartments associated with the criminal activity:

(b)(6), (b)(7)(C)

Post Operation Results:

On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Lane (Claiborne Apartments) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro PD Gang Unit. This enforcement operation resulted in the arrest of twenty (20) individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives.

Several other United States Citizen (USC) possible juvenile gang members from 7OP (Seven Oaks Park) MS-13 clique and SLC (Surenos Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Metro PD Gang Unit and ICE Officers/Agents.

All violators were taken to the ICE Nashville Office for processing. One (1) subject was released; due to a pending appeal on an IJ Order of Removal and active immigration bond. Nineteen (19) remain in ICE custody, pending removal from the United States.

On October 22, 2010, (b)(6), (b)(7)(C) with Justice for our Neighbors (NGO) contacted ERO New Orleans and requested delayed transfers of all detainees arrested during operation for attorney interviews. It was determined that detainees had already departed Davidson County Jail, Nashville, TN. However, coordinated interviews were allowed at ERO Nashville 247 Venture Circle office prior to actual transfer to DeKalb County Jail (DCJ), Fort Payne, AL. In addition, further accommodations have been offered to NGO to allow personal interviews or VTC interviews with detainees this weekend.

Please let me know if you need additional information.

Thanks,
Phil

From: (b)(6), (b)(7)(C)
To: Miller, Philip T
Sent: Mon Oct 25 11:08:25 2010
Subject: Fw: Did we

Need details please ASAP

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Sent: Mon Oct 25 11
Subject: Fw: Did we

(b)(6), (b)(7)(C)
Assistant Deputy Director, ICE
202-732 (w)
202-590 (b)(6) (c)

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C) weg, John
Sent: Mon Oct 25 1
Subject: Re: Did we

Get me some details?

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Sent: Mon Oct 25 1
Subject: FW: Did we

A gang operation is the closest thing I found.

From: (b)(6), (b)(7)(C)
Sent: Monday, October 25, 2010 11:27 AM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: FW: Did we

From: Miller, Philip T
Sent: Monday, October 25, 2010 11:24 AM
To: (b)(6),(b)(7)(C)
Subject: Re: Did we

No operation. Is this the same issue as last week with the Metro PD op against Surenos and MS-13? HSI and FOT Nashville assisted but Metro Gang Unit was the lead.

From: (b)(6),(b)(7)(C)
To: Miller, Philip T
Sent: Mon Oct 25 10:11:20 2010
Subject: FW: Did we have an operation at an apartment complex in Tenn this weekend?

????????????????????

From: (b)(6),(b)(7)(C)
Sent: Monday, October 25, 2010 11:07 AM
To: (b)(6),(b)(7)(C)
Cc: (b)(6),(b)(7)(C)
Subject: Did we have an operation at an apartment complex in Tenn this weekend?

(b)(6),(b)(7)(C)
Assistant Deputy Director
Immigration and Customs Enforcement

(b)(6)

(b)(6)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: , 2010 4:30 PM
To: (b)(6), (b)(7)(C)
Cc: Miller, Philip T
Subject: RE: ERO Addendum to 10/20/10 HSI OP
Attachments: ERO annex to OI OP PLAN 10-20-2010 v2.pdf
Importance: High

Thanks (b)(6), (b)(7)(C)

Approved...See attached

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 19, 2010 3:19 PM
To: (b)(6), (b)(7)(C)
Cc:
Subject: ERO Addendum to 10/20/10 HSI OP
Importance: High

(b)(6), (b)(7)(C) All members of the FOT have agreed to a shift change to (b)(7)(C)

(b)(6), (b)(7)(C)

Deportation Officer
New Orleans Field Office, Memphis Sub-Office
842 Virginia Run Cove
Memphis, TN 38122
Phone: 901-544- (b)(6)

(b)(6)

"People sleep peaceably in their beds at night only because rough men and women stand ready to do violence on their behalf."

Banner in the 82nd Airborne Division Mess Hall in Baghdad with a nod to George Orwell

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: 2010 2:39 PM
To: (b)(6), (b)(7)(C) Miller, Philip T
Cc: (b)(6), (b)(7)(C)
Subject: FW: SUPPORT NASHVILLE PD AND HSI - KNOCK & TALK OP 10-20-10
Attachments: ClairmontAptOpPlan 10-20-10.doc; ERO annex to OI OP PLAN 10-20-2010.DOC
Importance: High

Phil,

NSV/FOT is awaiting a signature page for the HSI OPLAN. The HSI OPLAN does not have us currently assigned to any individual teams.

HSI will be making individual team assignments at the OPS Briefing tomorrow evening at

(b)(7)(e) There will be a mix of HSI, Metro and ERO but we (b)(7)(e)
(b)(7)(e)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

*Supervisory Detention and Deportation Officer
New Orleans Field Office, Memphis Sub-Office
842 Virginia Run Cove
Memphis, TN 38122
Phone: 901-544 (b)(6)*

(b)(6)

From: (b)(6), (b)(7)(C)
Sent: 2010 11:42 AM
To: (b)(6), (b)(7)(C)
Subject: LLE PD AND HSI - KNOCK & TALK OP 10-20-10
Importance: High

Hello (b)(6), (b)(7)(C)

Attached, please find the HSI Op Plan and ERO Fug Ops Addendum for the Knock and Talk Op scheduled for 10/20/10 at (b)(7)(e) hrs. I'm waiting for the signature page for the HSI Op Plan and will forward it as soon as I receive it. Per the Addendum, we will assist with interviews and alienage determinations, as well as, any administrative arrests. Nashville Metro PD Gang Unit will be the lead agency. HSI and Nashville Fug Ops Team will be support agencies.

Thank You,

(b)(6), (b)(7)(C)

*Supervisor Fugitive Operations
DHS/ICE/ERO*

New Orleans Field Office
Nashville Sub-Office
(615) 316- (b)(6) desk
(615) 642 (b)(6) Blackberry

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: 010 3:53 PM
To: (b)(6), (b)(7)(C); Miller, Philip T
Subject: FW: SUPPORT NASHVILLE PD AND HSI - KNOCK & TALK OP 10-20-10
Attachments: ClairmontAptOpPlan 10-20-10 SIGNATURE PAGE.pdf
Importance: High

HSI signature page.

(b)(6), (b)(7)(C)

*Supervisory Detention and Deportation Officer
New Orleans Field Office, Memphis Sub-Office
842 Virginia Run Cove
Memphis, TN 38122
Phone: 901-544- (b)(6)*

(b)(6)

From: (b)(6), (b)(7)(C)
Sent: Tuesday, October 19, 2010 2:45 PM
To: (b)(6), (b)(7)(C)
Subject: RE: SUPPORT NASHVILLE PD AND HSI - KNOCK & TALK OP 10-20-10
Importance: High

Hello (b)(6), (b)(7)(C)

Just received the signature page from the RAC. Please see attached.

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Se 9, 2010 11:42 AM
To: (b)(6), (b)(7)(C)
Su VILLE PD AND HSI - KNOCK & TALK OP 10-20-10
Importance: High

Hello (b)(6), (b)(7)(C)

Attached, please find the HSI Op Plan and ERO Fug Ops Addendum for the Knock and Talk Op scheduled for 10/20/10 at (b)(6) hrs. I'm waiting for the signature page for the HSI Op Plan and will forward it as soon as I receive it. Per the Addendum, we will assist with interviews and alienage determinations, as well as, any administrative arrests. Nashville Metro PD Gang Unit will be the lead agency. HSI and Nashville Fug Ops Team will be support agencies.

Thank You,

(b)(5), (b)(7)(C)

Supervisor Fugitive Operations
DHS/ICE/ERO
New Orleans Field Office
Nashville Sub-Office
(615) 316- (b)(5) desk
(615) 642- (b)(5) Blackberry

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent:
To: Miller, Philip T
Subject: FW: ACLU press conference at 3 pm

Phil—FYI, below are some of the allegations that the Tennessean reporter heard.

(b)(6), (b)(7)(C)

Spokesman
Immigration and Customs Enforcement
1250 Poydras St., Suite 2200
New Orleans, Louisiana 70113
504-310- (b)(6)

From: (b)(6), (b)(7)(C) (b)(6)
Sent: Thursday, O
To: (b)(6), (b)(7)(C)
Sub: ess conference at 3 pm

Ok, just got back from the presser. The ACLU And Tennessee Immigrant & Refugee Right Coalition held it. They held it outside the Clairmont apartments at 1019 Patricia Drive in South Nashville.

Their allegations are that the apartment was squalid, people complained to management and management may have called ICE as retribution for complaining.

They also alleged that ICE raided the apartment last Wednesday (20th), kicked down doors (without warrants) and dragged people out of homes at gunpoint, leaving children behind.

I'll just need some sort of response from ICE concerning those allegations.

I'm also trying to confirm the number of people detained from that particular raid and see what prompted the raid.

Thanks!

(b)(6), (b)(7)(C)

The Tennessean
Office: 615-726- (b)(6)
Fax: 615-259-8093

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent:
To: Haas, Brian
Subject: RE: ACLU press conference at 3 pm

Brian—Thanks for the heads-up. E-mail is best for me.

(b)(6), (b)(7)(C)

Spokesman
Immigration and Customs Enforcement
1250 Poydras St., Suite 2200
New Orleans, Louisiana 70113
504-310- (b)(6)

From: (b)(6), (b)(7) (b)(6)
Sent: (b)(6)
To: (b)(6)
Subject: ence at 3 pm

(b)(6), (b)(7)(C)

I just wanted to give you the heads up that the ACLU is holding a press conference today at 3 p.m. about an ICE raid. I have no idea what they're going to talk about, but I wanted to let you know I'll be seeking comment from you after the presser.

Email work or should I hit you up by phone?

(b)(6), (b)(7)(C)

The Tennessean
Office: 615-726- (b)(6)
Fax: 615-259-8093

(b)(6), (b)(7)(C)

U.S. Department of Homeland Security
Immigration and Customs Enforcement
ERO Annex to OI Operation Plan

Operation Name: No specific operation name
Operation Order Number: TECS case number (b)(7)e
Operation Date(s): 10/20/2010 (b)(7)e hrs
Report Date: 10/19/2010

DRO Logistics in Support of OI Operation

Briefing is 10/20/2010 at (b)(7)e hours at the Nashville FOT Office. All members of the FOT have agreed to change their shift from 0700-1500 to (b)(7)e for participation in operation.

Responsibility of NSV/ERO during OI Operation

Nashville Fug/Ops will be responsible for assisting with interviewing and determining legal status of any foreign nationals that may be encountered once Nashville Metro PD has secured consent to enter a residence. NVL Fug/Ops will assist with administrative arrests (if any) and processing, as needed. ERO will be assigned to teams that include HSI and Nashville Metro PD (see HSI Op Plan) during the briefing that will be held on 10/20/10. All entries made into any residences will be based upon consent of the occupant(s), as requested by Nashville Metro PD. There will be no dynamic entries or search warrants served.

Juvenile Issues

Due to the time and location, it is not anticipated that any juveniles will be encountered.

If a juvenile is apprehended, the primary or secondary juvenile coordinator will be contacted for placement.

Detainee Movement

Existing detention vans will be utilized to facilitate transport from arrest site to 247 Venture Circle, Nashville, TN for processing and to Davidson County Jail for detention.

Alien Property

Alien Property will not be received by ERO unless it is properly tagged and documented. Per New Orleans Field Office policy, any property not going with detained aliens will be

retained by the Office of Investigations for dissemination, to include bicycles, cell phones, laptops, etc.

Travel Voucher Information for Detail

None

Contact Numbers

Address:
ICE RAC/Nashville
247 Venture Circle
Nashville, TN

Office of Investigations telephone numbers:

See OI OpsPlan

Cell numbers of participating ERO personnel:

(b)(6), (b)(7)(C)	615-642	(b)(6)	
	615-642		
	615-416		
	504-329		
	615-642		
	615-642		

APPROVING OFFICIAL

[Signature]

Philip T. Miller
Field Office Director
New Orleans Field Office

OCT 19 2010

Date

ERO
Documents
REDACTED
2 of 2

File No: (b)(6), (b)(7)(C)

Event No: (b)(7)(C)

Date: September 27, 2008

To any immigration officer of the United States Department of Homeland Security:

(b)(6), (b)(7)(C)

(Full name of alien)

who entered the United States at Laredo, Texas on June 1, 2005
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
☒ a designated official
☐ the Board of Immigration Appeals
☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:
241(a)(5)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:
Salaries and Expenses, Department of Homeland Security 2008.

George H. Lund III
(Signature of immigration officer)Field Office Director
(Title of immigration officer)10/01/08 New Orleans, LA
(Date and office location)

Return executed # 205 +
#294 to:

DHS ICE DRO
842 Virginia Run Cove
Memphis, TN 38122

Form I-305 (Rev. 02/01/07)

10/21/2010 5:58:52 AM 4 of 6

ICE Rule 26.00144
ICE 2014-FOIA-04578.000249

File No. (b)(6), (b)(7)(C)

Event No. (b)(7)(C)

FINS #: (b)(6), (b)(7)(C)

Date: October 20, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

EAGLE PASS, TEXAS

an alien who entered the United States at or near _____ on _____
(Port)

March 1, 2003

(Date)

is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SDDO

(Title)

Certificate of Service

Served by me at NASHVILLE, TENNESSEE on October 20, 2010 at 12:00 AM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

SENIOR SPECIAL AGENT

(Title of officer serving warrant)

Form I-200 (Rev. 02/01/07)

File No: (b)(6), (b)(7)(C)

Date: December 09, 2004

To any officer of the United States Immigration and Naturalization Service:

(b)(6), (b)(7)(C)

(Full name of alien)

who entered the United States at Brownsville, Texas on November 06, 2004
(Place of entry) (Date of entry)

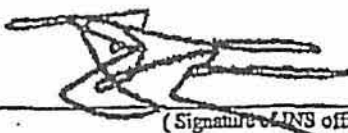
is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
☐ a district director or a district director's designated official
☐ the Board of Immigration Appeals
☐ a United States or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

I, the undersigned officer of the United States by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of: the Appropriation: "Salaries & Expenses, Immigration and Naturalization Service, 2005" including the expenses of an attendant, if necessary


(Signature of INS official)

LR/A162

Marc J. Moore
Field Office Director
Detention and Removal
(Title of INS official)

May 25, 2005, Harlingen, Texas
(Date and office location)

Dept. of Homeland Security
ICE
1010 East Whitley Road
Oakdale, LA 71463

Form I-205 (Rev. 4-1-97) N

10/21/2010 10:38:11 AM 2 of 8

ICE Rule26 00146
ICE.2014-FOIA-01578.000251

FINS #:

(b)(7)(e)

File No. (b)(6), (b)(7)(C)

Event No. (b)(7)(e)

Date: October 21, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Unknown place

an alien who entered the United States at or near _____ on _____

(Port)

Unknown Date

(Date)

is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SUPERVISORY DEPORTATION OFFICER

(Title)

Certificate of Service

Served by me at NASHVILLE, TN on October 21, 2010 at 12:00 PM. I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

IEA

(Title of officer serving warrant)

Form I-200 (Rev. 05/01/07)

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

Event Number (b)(6), (b)(7)(C)

File No. (b)(6), (b)(7)(C)

Date: May 31, 2007

In the Matter of: (b)(6), (b)(7)(C)

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Immigration and Naturalization Service has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (6)(C)(i); ☐ (6)(C)(ii); ☒ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

- 1) You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act; To wit: You are a citizen and or national of Honduras by virtue of birth with no valid United States immigration documents. You entered illegally on May 26, 2007 at approximately 5:00 P.M. by wading across the Rio Grande River at or near Hidalgo, Texas with the intention to reside and find work in Miami, Florida.

(b)(6), (b)(7)(C)
BORDER PATROL AGENT

Name and title of immigration officer (Print)

(b)(6), (b)(7)(C)

Signature of immigration officer

ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

(b)(6), (b)(7)(C)

SUPERVISORY BORDER PATROL AGENT

Name and title of immigration officer (Print)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

ACTING FIELD OPERATIONS SUPERVISOR

Name and title of supervisor (Print)

(b)(6), (b)(7)(C)

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on 5-31-07

(Date)

(b)(6), (b)(7)(C)

Signature of immigration officer

Form I-220 (Rev. 4-1-97)

Warrant for Arrest of Alien

File No. (b)(6), (b)(7)(C)

Event No. (b)(7)(C)

FINS #: (b)(6), (b)(7)(C), (b)(7)(D)

Date: October 21, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Unknown

an alien who entered the United States at or near _____ on _____

(Port)

Unknown Date _____ is within the country in violation of the immigration laws and is

(Date)

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SUPERVISORY DEPORTATION OFFICER

(Title)

Certificate of Service

Served by me at NASHVILLE, TN on October 20, 2010 at 11:00 PM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

Deportation Officer

(Title of officer serving warrant)

Form I-200 (Rev. 01/01/07)

Department of Homeland Security
United States Immigration and Customs Enforcement

Warrant of Removal/Deportation

842 Virginia Run Cove
Memphis, TN. 38122

File No: (b)(6), (b)(7)(C)

Date: December 24, 2009

To any officer of the United States Immigration and Customs Enforcement

(b)(6), (b)(7)(C)

(Full name of alien)

Who entered the United States at or near Unknown place on or about Unknown Date
(place of entry) (Date of Entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act

Section(s) 212 (a) (6) (A) (i) of the Immigration and Nationality Act.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

Transportation company which brought him to the United States, if practicable;
otherwise at the expense of the appropriations, "Salaries and Expenses of the,
United States Immigration and Customs Enforcement, 2009" including the expense of
an attendant if necessary.

Philip T. Miller Jr
(Signature of ICE official)

Philip T. Miller
Field Office Director
(Title of ICE official)

UNDER DOCKET CONTROL:
"MEM"

DEPT. OF HOMELAND SECURITY
IMMIGRATION & CUSTOMS ENFORCEMENT
1010 EAST WHATLEY ROAD
OAKDALE, LA 71463

December 24, 2009 Memphis, TN.
(Date and office location)

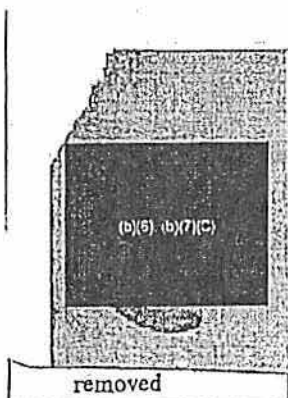
ICE Rule 26 00150
-ICE.2014-FOIA-01578.000255

To be completed by Service officer executing the warrant:

Name of alien being removed:

(b)(6), (b)(7)(C)

Port, date, and manner of removal: _____



(b)(6), (b)(7)(C)

(Signature of alien being fingerprinted)

(b)(6), (b)(7)(C)

ing print)

Departure witnessed by: _____

(Signature and title of ICE official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____

(Signature and title of ICE official)

File No. (b)(6), (b)(7)(C)

Event No: (b)(7)(C)

FINS #: (b)(6), (b)(7)(C), (b)(7)(D)

Date: October 20, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

NOGALES, ARIZONA

an alien who entered the United States at or near _____ on _____

(Port)

May 1, 2001

(Date)

is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Delegated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Delegated Immigration Officer)

SDDO

(Title)

Certificate of Service

Served by me at NASHVILLE, TENNESSEE on October 20, 2010 at 10:00 PM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

SPECIAL AGENT

(Title of officer serving warrant)

Form I-200 (Rev. 01/01/07)

Warrant for Arrest of Alien

File No. (b)(6), (b)(7)(C)
Event No: (b)(7)(C)
Date: October 21, 2010
FINS #: (b)(7)(C)

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)
(Full name of alien) Unknown
an alien who entered the United States at or near (b)(6), (b)(7)(C) on
Unknown Date (Date) is within the country in violation of the immigration laws and is
therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)
(Signature of Designated Immigration Officer)
(b)(6), (b)(7)(C)
(Print name of Designated Immigration Officer)
SUPERVISORY DEPORTATION OFFICER
(Title)

Certificate of Service

Served by me at Nashville, Tn on October 21, 2010 at 12:00 AM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)
(Signature of officer serving warrant)
DEPORTATION OFFICER
(Title of officer serving warrant)

Form I-200 (Rev. 01/01/07)

File No. (b)(6), (b)(7)(C)

Event No: (b)(7)(C)

FINS #: (b)(6), (b)(7)(C), (b)(7)(D)

Date: October 21, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Unknown

an alien who entered the United States at or near _____ on _____

(Port)

Unknown Date

(Date)

is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SUPERVISORY DEPORTATION OFFICER

(Title)

Certificate of Service

Served by me at Nashville, TN _____ on October 21, 2010 at 12:00 AM _____.

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

DEPORTATION OFFICER

(Title of officer serving warrant)

Form I-200 (Rev. 04/01/07)

File No. (b)(6), (b)(7)(C)

Event No: (b)(7)(e)

FINS #: (b)(6), (b)(7)(C), (b)(7)(e)

Date: October 21, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Unknown

an alien who entered the United States at or near _____ on

(Port)

Unknown Date

(Date)

is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SUPERVISORY DEPORTATION OFFICER

(Title)

Certificate of Service

Served by me at NASHVILLE, TN on October 20, 2010 at 11:00 PM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

Deportation Officer

(Title of officer serving warrant)

Form I-200 (Rev. 03/01/07)

Warrant for Arrest of Alien

File No. (b)(6), (b)(7)(C)

Event No. (b)(7)(e)

FINS #: (b)(6), (b)(7)(C), (b)(7)(e)

Date: October 21, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Unknown place

an alien who entered the United States at or near _____ on _____

(Port)

Unknown Date

(Date)

is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SUPERVISORY DEPORTATION OFFICER

(Title)

Certificate of Service

Served by me at NASHVILLE, TN on October 21, 2010 at 12:00 AM.
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

IEA

(Title of officer serving warrant)

Form I-200 (Rev. 08/01/07)

File No. (b)(6), (b)(7)(C)

Event No: (b)(7)(C)

Date: October 21, 2010

PINS #: (b)(6), (b)(7)(C), (b)(7)(D)

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Unknown place

an alien who entered the United States at or near _____ on _____

(Port)

Unknown Date

(Date)

is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

SUPERVISORY DEPORTATION OFFICER

(Title)

Certificate of Service

Served by me at NASHVILLE, TN on October 21, 2010 at 12:00 PM. I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

IEA

(Title of officer serving warrant)

Form I-200 (Rev. 02/01/02)

Warrant for Arrest of Alien

File No. (b)(6), (b)(7)(C)

Event No. (b)(7)(C)

Date: October 20, 2010

FINS #: (b)(6), (b)(7)(C), (b)(7)(E)

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

San Ysidro, CA

an alien who entered the United States at or near

(Port)

on

April 1, 2004

(Date)

is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Full name of Designated Immigration Officer)

(Title)

Certificate of Service

Served by me at Nashville, TN on October 20, 2010 at 12:00 AM

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant:

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

SPECIAL AGENT

(Title of officer serving warrant)

Form I-200 (Rev. 01/01/07)

File No. (b)(6), (b)(7)(C)

Event No: (b)(7)(C)

Date: October 20, 2010

FINS #: (b)(6), (b)(7)(C), (b)(7)(D)

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

Douglas, Arizona

an alien who entered the United States at or near _____ on _____

(Port)

October 1, 2005

(Date)

is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the Immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(b)(6), (b)(7)(C)

(Print name of Designated Immigration Officer)

Group Supervisor *S. J. D.*

(Title)

Certificate of Service

Served by me at Nashville, TN on October 20, 2010 at 12:00 AM

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of officer serving warrant)

SENIOR SPECIAL AGENT

(Title of officer serving warrant)

Form I-200 (Rev. 01/01/07)

Warrant for Arrest of Alien

File No. (b)(2)(a) (b)(6)
Event No: (b)(2)(a)
Date: October 20, 2010

FINS #: (b)(2)(a) (b)(6) (b)(7)(C)

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(2)(a) (b)(6) (b)(7)(C)
(Full name of alien)
an alien who entered the United States at or near El Paso, TX on
September 1, 2009 (Date) is within the country in violation of the immigration laws and is
therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(2)(a) (b)(6)

(b)(2)(a) (b)(6)

(Print as me of Designated Immigration Officer)

Group Supervisor SPDO

(Title)

Certificate of Service

Served by me at Nashville, Tennessee on October 20, 2010 at 10:36 PM
I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(2)(a) (b)(6)

(Signature of officer serving warrant)

SENIOR SPECIAL AGENT

(Title of officer serving warrant)

Form I-200 (Rev. 05/01/07)

File No. (b)(6), (b)(7)(C)

Event No: (b)(7)e

FINS #: (b)(6), (b)(7)(C), (b)(7)(D)

Date: October 20, 2010

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(b)(6), (b)(7)(C)

(Full name of alien)

El Paso, TX

an alien who entered the United States at or near _____ on _____

(For)

May 2002

(Date)

is within the country in violation of the immigration laws and is

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

(b)(6), (b)(7)(C)

(Signature of Designated Immigration Officer)

(Print name of Designated Immigration Officer)

SDDO

(Title)

Certificate of Service

Served by me at Nashville, TN on October 20, 2010 at 10:00 PM

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

(b)(6), (b)(7)(C)

(Signature of Officer Serving Warrant)

SENIOR SPECIAL AGENT

(Title of officer serving warrant)

Form I-205 (Rev. 06/01/07)

Warrant of Removal/Deportation

File No.:

(b)(6), (b)(7)(C)

Date:

12/29/2006

To any officer of United States Immigration and Customs Enforcement:

(b)(6), (b)(7)(C)

(Full name of Alien)

who entered the United States at

Laredo, Texas

on

6/27/2002

(Place of Entry)

(Date of Entry)

is subject to removal/deportation from the United States, based upon a final order by:

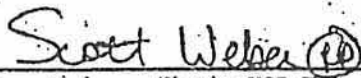
- ☒ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

212 (a)(6)(A)(i)

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

"Salaries and Expenses" Immigration and Customs Enforcement, 2007, including the expense of an attendant, if necessary.


(Signature of ICE official)Scott Weber, Field Office Director
For Detention and Removal Operations, NEW Office

(Title of ICE Official)

7/23/2003

Newark, NJ 07114

(WD Date and Office Location)

Form I-205 (Rev. 4-1-97)N

11:58

TECS II EXTERNAL MESSAGE DISPLAY

10/10/2010

(b)(7)(C)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM NCIC ON 10/06/10 AT 11:51:41

(b)(7)(C)

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/ (b)(6), (b)(7)(C) SEX/M RAC/W DOB/ (b)(6), (b)(7)(C) PUR/C

NAME (b)(6), (b)(7)(C) FBI NO. (b)(6), (b)(7)(C), (b)(7)(D) INQUIRY DATE
2010/10/06

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M W (b)(6), (b)(7)(C) N

BIRTH PLACE
MEXICO

FINGERPRINT CLASS PATTERN CLASS
MESSAGE IS DISPLAYED.

(b)(7)(C)

(b)(7)(C)

(b)(6), (b)(7)(C)

11:58

TECS II EXTERNAL MESSAGE DISPLAY

10/2010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

(b)(6), (b)(7)(C), (b)(7)e

ALIAS NAMES

(b)(6), (b)(7)(C)

IDENTIFICATION DATA UPDATED 2007/04/02

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

TENNESSEE - STATE ID, (b)(6), (b)(7)(C)

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
MESSAGE IS DISPLAYED.

(b)(7)e

USE PF KEYS TO CONTINUE

(b)(7)e

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10 2010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM NLETS ON 10/06/10 AT 12:10:22

(b)(7)e

09:10 10/06/2010

09:10 10/06/2010

(b)(7)e

(b)(7)e

TEXT

HDR, (b)(6), (b)(7)(C), (b)(7)e

ATN, (b)(6), (b)(7)(C)

***** CRIMINAL HISTORY RECORD *****

Data As Of 2010-10-06

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number

(b)(6), (b)(7)(C), (b)(7)e

MESSAGE IS DISPLAYED.

(b)(7)e

FIRST PAGE OF MESSAGE

(b)(7)e

(b)(6), (b)(7)(C)

- Need
Photo

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10 2010

(b)(7)g

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

State Id Number (b)(6), (b)(7)(C) ()

Purpose Code C

Attention (b)(6), (b)(7)(C)

The information in this rap sheet is subject to the following caveats:

THIS RECORD IS BASED ONLY ON THE SID OR FBI NUMBER IN YOUR REQUEST (

(b)(6), (b)(7)(C)) BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. USE OF THE FOLLOWING RECORD IS REGULATED BY LAW. IT IS FURNISHED FOR OFFICIAL USE ONLY AND SHOULD ONLY BE USED FOR THE PURPOSE REQUESTED. WHEN

EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT CONTRIBUTED THE FINGERPRINTS. (TBI; 2005-06-28)

***** IDENTIFICATION *****

Subject Name(s)

(b)(6), (b)(7)(C)

(AKA)

MESSAGE IS DISPLAYED.

(b)(7)g

USE PF KEYS TO CONTINUE

(b)(7)g

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10.1.2010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

(b)(6), (b)(7)(C)

(AKA)

(b)(6), (b)(7)(C)

(AKA)

Subject Description

FBI Number

State Id Number

(b)(6), (b)(7)(C), (b)(7)E

(b)(6), (b)(7)(C)

Sex

Race

Skin Tone

Male

White

Unknown

Height

Weight

Date of Birth

(b)(6), (b)(7)(C)

Hair Color

Eye Color

(b)(6), (b)(7)(C)

Place of Birth

MM

MM

MM

MM

Residence

MESSAGE IS DISPLAYED.

(b)(7)E

USE PF KEYS TO CONTINUE

(b)(7)E

12:12

TECS II EXTERNAL MESSAGE DISPLAY

100 0010

(b)(7)E

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

Residence as of 2006-12-11

(b)(6), (b)(7)(C)

NASHVILLE, TN

Residence as of 2007-04-02

(b)(6), (b)(7)(C)

NASHVILLE, TN

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Tracking Number (b)(6), (b)(7)(C), (b)(7)E

Earliest Event Date 2006-12-10 Incident Date 2006-12-10

Arrest Date 2006-12-10

Arrest Case Number (b)(6), (b)(7)(C)

Arresting Agency TN0190100 METROPOLITAN NASHVILLE PD

Subject's Name (b)(6), (b)(7)(C)

MESSAGE IS DISPLAYED.

(b)(7)E

USE PF KEYS TO CONTINUE

(b)(7)E

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10 2010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 05 *****

Offender Id Number (b)(6), (b)(7)(C)

Charge 1

Charge Number

Charge Tracking Number

(b)(6), (b)(7)(C)

Charge Literal DRIVING UNDER THE INFLUENCE

Counts 1

Severity UNKNOWN

Charge 2

Charge Number

Charge Tracking Number

(b)(6), (b)(7)(C)

Charge Literal LICENSE, DRIVERS LICENSE REQUIRED

Counts 1

Severity UNKNOWN

Court Disposition (Cycle 001)

MESSAGE IS DISPLAYED.

(b)(7)e

USE PF KEYS TO CONTINUE

(b)(7)e

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10002010

(b)(7)g

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 06 *****

Court Case Number

(b)(6), (b)(7)(C)

Court Agency

TN0190100 METROPOLITAN NASHVILLE PD

Subject's Name

(b)(6), (b)(7)(C)

Charge

1

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal

DUI

Charge Description

MISDEMEANOR

Counts

1

Severity

MISDEMEANOR

Disposition

GUILTY PLEA - AS CHARGED(2006-12-11;
DISPOSITION GUILTY RECEIVED 11 MONTHS 29 DAYS
FINE \$350.00 COST \$693.50 SUSPENDED=N 24 HRS)

Court Disposition

(Cycle 001)

MESSAGE IS DISPLAYED.

(b)(7)g

USE PF KEYS TO CONTINUE

(b)(6), (b)(7)(C), (b)(7)g

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10-02-2010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 07 *****

Court Case Number

(b)(5), (b)(7)(C)

Court Agency

(b)(7)a

METROPOLITAN NASHVILLE PD

Subject's Name

(b)(6), (b)(7)(C)

Charge

2

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal

LIC, DRIVER LIC REQ

Charge Description

MISDEMEANOR

Counts

2

Severity

MISDEMEANOR

Disposition

DISMISSED(; DISPOSITION DISMISSED)

===== Cycle 002 =====

Tracking Number

(b)(7)c

Earliest Event Date

2007-01-25 Incident Date

2007-01-25

MESSAGE IS DISPLAYED.

(b)(7)c

USE PF KEYS TO CONTINUE

(b)(7)c

ICE Rule26 00171

ICE.2014-FOIA-01578.000276

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10 010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)
(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 08 *****

Arrest Date 2007-01-25
Arresting Agency (b)(7)e WILLIAMSON COUNTY SO
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number
Charge Tracking Number (b)(6), (b)(7)(C)
Charge Literal NO DL
Counts 1
Severity UNKNOWN

===== Cycle 003 =====

Tracking Number (b)(7)e
Earliest Event Date 2007-04-02 Incident Date 2007-04-02

Arrest Date 2007-04-02

MESSAGE IS DISPLAYED.

(b)(7)e

USE PF KEYS TO CONTINUE

(b)(7)e

ICE Rule26 00172

TCE.2014-FOIA-01578.000277

12:12

TECS II EXTERNAL MESSAGE DISPLAY

10. 2010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 09 *****

Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)D BRENTWOOD PD
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number (b)(6), (b)(7)(C)
Charge Literal PROHIBITED WEAPON
Counts 1
Severity UNKNOWN

***** INDEX OF AGENCIES *****

Agency BRENTWOOD PD; (b)(7)D

Agency WILLIAMSON COUNTY SO; (b)(7)D

MESSAGE IS DISPLAYED.

(b)(7)D

USE PF KEYS TO CONTINUE

(b)(7)D

EARM Encounter Details

EventID-213 | Alias | Address | Phone Number | Scars, Marks, Tattoos | Relatives | Misc. Numbers | Employment | Detainers | Attorneys / Representatives

Print

Encounters

Encounters for Case # (b)(7)(C) Please select an Encounter to view detailed information.

Subject ID	A-Number	Last Name	First Name	COB	Age	Entry Date	Apprehend	Processing Disposition	Unlink
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	El Salvador	42	10/20/2000	11/15/2002	Noise to Appear Released (I-862)	Unlink from Encs
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	El Salvador	42	10/20/2000	01/13/2010	Bag and Baggage	Unlink from Encs

A-Number: (b)(6), (b)(7)(C) Subject ID: (b)(6), (b)(7)(C) Name: (b)(6), (b)(7)(C)

NOTICE: The information below has been captured from EARM (ENFORCE) and cannot be edited within EARM; to edit this information please use EARM (ENFORCE).

Biographical Information	Encounter Information	Event/Incident Information	Alien Encounter Photo
FIHS: (b)(6), (b)(7)(C), (b)(7)(D) Sex: M DOB: (b)(6), (b)(7)(C) Age at Encounter: 41 Current Age: 42 COB: El Salvador COC: El Salvador Marital Status: Single	POE: EAGLE PASS INTL BRIDGE Apprehension Location: Nashville, TN Entry Date: 10/20/2000 Entry Status: PWA Other Admission Class: Apprehension Date: 01/13/2010 Processing Disposition: Bag and Baggage Aggravated Felon Status: N - Not an Aggravated Felon Mandatory Detention: N	Event ID: (b)(7)(D) Title: OSUP Arrest Nashville, TN Event Date: 01/13/2010 10:00 AM Type: CAP - DRO Criminal Alien Program Lead Type: Operation:	(b)(6), (b)(7)(C)

I-213 Narrative:

Alienage and Removability: (b)(6), (b)(7)(C) is not a citizen or national of the United States. Subject is a native of El Salvador and a citizen of El Salvador. (b)(6), (b)(7)(C) entered the United States on or about an October 20, 2000 at or near Eagle Pass, TX. Subject was not then inspected, admitted, or paroled by an Immigration Officer. Subject makes no claims to lawful immigration status. He does not appear eligible for relief under the INA as amended. Subject has no pending applications with Citizenship and Immigration Services. Encounter Data: (b)(6), (b)(7)(C) was encountered by ICE at the Office of Detention and Removal at Nashville, TN on 01/13/2010 pursuant to an Order of Supervision. Subject was reporting to the DRO Office with his son (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) was previously placed on an Order of Supervision due to having a minor son being in immigration proceedings. During the office visit, (b)(6), (b)(7)(C) and his son were interviewed and fingerprinted. Record checks revealed that (b)(6), (b)(7)(C) has a Final Order of Removal, and he was denied Temporary Protective Status by Citizenship and Immigration Services. (b)(6), (b)(7)(C) son, (b)(6), (b)(7)(C) is now eighteen and also has a Final Order of Removal in Immigration Proceedings. (b)(6), (b)(7)(C) and his son were detained at the DRO Office in Nashville, TN and processed for removal. Processing Data: Subject was interviewed and fingerprinted at the Nashville, TN ICE DRO office. Searches of the following databases were performed: (b)(7)(D). Subject was assigned alien number A (b)(6), (b)(7)(C) and served a Warrant of Arrest, Custody Determination, Consular Notification, and given a list of free legal service providers. Subject is being processed as a B&B. Attorney, (b)(6), (b)(7)(C) (615-633-1111), (b)(6), (b)(7)(C) was contacted during processing. He stated (b)(6), (b)(7)(C) son was given deferred action and the subjects were placed on an Order of Supervision. Property Information: Subject had a wallet with contents, \$1.00, and keys at time of detention. Subject's property was picked up by (b)(6), (b)(7)(C) on the day of processing at 1211pm. Phone Call, 01/13/2010 1030-1033 Completed Successfully. (b)(6), (b)(7)(C) Called: (b)(6), (b)(7)(C) attorney (615-633-1111). (b)(6), (b)(7)(C) D.O. Health Information: Appears good Equities in the United States/Family Information: Subject has no equities in the United States and no legal ties to the community. Subject has been working construction and his son attends school at Glendell high school in Nashville, TN. (b)(6), (b)(7)(C) has a wife and four more children living in El Salvador. Immigration History: 11/04/2009- Approved work authorization by CIS based on OSUP 01/30/2009. Approved work authorization by CIS based on OSUP 06/30/2008. CIS Administrative Appeals Office Denied TPS 02/12/2008- TPS denied 02/12/2008- Denied work authorization for TPS 01/14/2008. Approved work authorization by CIS based on OSUP 06/26/2007. Denied work authorization for TPS 06/26/2007- TPS Denied 01/12/2007- TPS Denied 07/11/2005- Approved work authorization by CIS based on TPS 05/10/2005- TPS Approved 12/03/2003- Approved work authorization by CIS based on application for asylum pending 12/10/2001- Approved work authorization by CIS based on application for asylum pending Criminal History: None reported Subject is removable under the following section of the INA as amended: 212(a)(6)(A)(i)

*Pass
Depnt*

10/6/2010

ICE ICE 2014 FOIA 61578000179 4

Person Record

[\[Edit Person Details\]](#)

Person ID: (b)(6), (b)(7)(C) Marital Status: Married City of Birth: FINIS: (b)(6), (b)(7)(C), (b)(7)(D)
First Name: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Religion: (b)(6), (b)(7)(C), (b)(7)(D)
Last Name: (b)(6), (b)(7)(C) Age: 42 A-Numbers: (b)(6), (b)(7)(C) Controlling A-Number: (b)(6), (b)(7)(C) BOP: (b)(6), (b)(7)(C)
Middle Name: Sex: Male
Aggravated Felon Status: N - Not an COB: El Salvador FBI Number: (b)(6), (b)(7)(C), (b)(7)(D) X 7
Aggravated Felon COC: El Salvador SSN Number: (b)(6), (b)(7)(C)

Comments:

Case History

Select a case to make it the active case you are currently working on; the header block above will change to reflect this. The currently active case is highlighted below.

Case #	Case Category	DOC	Final Order	Depart / Cleared Status
(b)(6), (b)(7)(C)	(b)(6) Excludable / Inadmissible - Administrative Final Order Issued	OAK	02/20/2003	0

Encounter History

A-Number	Subject ID	Last Name	First Name	COR	Age	Entry Date	Apprehended	Processing Disposition	Case #	Unlink from Person
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	ELSAL	42		01/13/2010	Bag and Baggage	(b)(6), (b)(7)(C)	Unlink from Person
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	ELSAL	42	10/20/2000	11/15/2002	Notice to Appear Released (I-602)	(b)(6), (b)(7)(C)	Unlink from Person

Potential Matching Encounters

Crimes

[Print](#)

Crime Entry

Date Added	NCIC Code	Description of Crime	Amount of Loss, Exceeds \$10K	Charge Date	Sentence Length
02/05/2010	(b)(7)(e)	Immigration	N/A		N/A

10/6/2010

All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All"

(b)(6), (b)(7)(C)

1 of 1



*DL photos cannot be disseminated to the public or press without the express written consent of the Department of Safety.

Personal Information

License Type: Temporary - Class D Only

Non CDL Status: SUSPENDED

CDL Status: NONE

DL#: (b)(6), (b)(7)(C)

Issued: 03/09/2009

Expires: 09/09/2010

Duplicates Issued: 0

Gender: M

Race: Hispanic

Height:

Weight:

Eye Color:

Hair Color:

D.O.B.:

SSN:



County: Davidson

Residence:

NASHVILLE, TN 37210

Last Updated: 08/08/2006

(b)(6), (b)(7)(C)

(b)(7)(E)

10/6/2010

ICE 2014 FOIA 01578 0002876

Mailing: Not Available

Last Updated: Not Available

Access to Driver License inquiries is governed by the Federal Driver's Privacy Protection Act of 2000 (DPPA).

Deconfliction

☐ Flag this Record

Handguns

No Handgun Permit

Restrictions

None

Endorsements

None

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(b)(7)(E)

10/6/2010

ICE Rule 26.00177
1576000282

All-Database Search Results:

TOP (0)

TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All

(b)(6), (b)(7)(C)

 Print MVR Report

(b)(6), (b)(7)(C)

Reinstatement Eligibility Date for Non-CDL: Indefinite

Reinstatement Eligibility Date for CDL: Indefinite

Former State/Lic No: / ** UNKNOWN **

1 - 4 of 4						
<u>Event Date</u>	<u>Action Date</u>	<u>Action Code</u>	<u>Location</u>	<u>Date Rec'd</u>	<u>MPH/Speed Zone</u>	<u>Case Number</u>
03/14/2006	04/26/2006	003	RUTHERFORD	06/06/2006	000/000	(b)(6), (b)(7)(C)
FAILURE TO OBEY TRAFFIC INSTRUCTIONS						
09/30/2008	11/03/2008	014	DAVIDSON	12/29/2008	000/000	
CARELESS OR NEGLIGENT DRIVING						
02/25/2009	06/03/2009	110	DAVIDSON	06/18/2009	000/000	
FAILURE TO PROVIDE EVIDENCE OF FIN RESP						
10/21/2009	01/06/2010	110	DAVIDSON	01/21/2010	000/000	
FAILURE TO PROVIDE EVIDENCE OF FIN RESP						

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(b)(7)(E)

10/6/2010

ICE ICE 2014-01578-000283

All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All"

MARTINEZ CARBAJAL, SALVADOR

(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)
05/19/2003	01/16/2007	11/07/2008	03/09/2009	

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(b)(7)(E)

10/6/2010

ICE/2014/FOIA-01578-00028479

CIMSIN
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX SYSTEM - DETAILED SEARCH DISPI

10/06/10
12:38:35

A#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C)

* DIGITIZED FILE - VIEW THE FILE IN IDDMP *

LAST: (b)(6), (b)(7)(C)
FIRST: (b)(6), (b)(7)(C)
MIDDLE: (b)(6), (b)(7)(C)
ALIASES: (b)(6), (b)(7)(C)
NATZ DATE:
COURT:
LOCATION:

SEX: POE: COB: ELSAL DOE: 00000000
FCO: DIG COA: EWI COC: FTC: (b)(6), (b)(7)(C) FATHER:
PFCO: NRC SFCO: DFO: 07122001 BIN: MOTHER:

SSN: (b)(6), (b)(7)(C) CONSOLIDATED A-NOS --OTHER INFORMATION--
I-94 ADM #: EADS-X
PASSPORT #:
FBI #:
DRIVER LIC:
FINGER CD#:

(b)(7)

10/06/10
12:38:58

#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C)

FARES #: (b)(7)(F) SSN #: (b)(6), (b)(7)(C) COB: ELSAL COA: EWI
WORK STATION ID: 0 OPERATOR ID: (b)(6), (b)(7)(C) OFFICER ID: (b)(6), (b)(7)(C)

SEQ#-----	TYPE-----	ACTION	DENY	START	EXPIRATION	PROVISION OF LAW
		--DATE--	CODE OFF	--DATE--	---DATE---	--8CFR 274A.12--
01	EXTENSION	12292008	ESC	03092009	09092010	(A) (12) ()
02	EXTENSION	12102007	ESC	12102007	03092009	(A) (12) ()
03	EXTENSION	05092007	ESC	05092007	09302007	(A) (12) ()
04	EXTENSION	08182005	WSC	08182005	09092006	(A) (12) ()
05	EXTENSION	10302003	SSC	10302003	03092005	(A) (12) ()
06	INITIAL ISSUANCE	08172001	SSC	08172001	09092002	(C) (19) ()

*** END OF EADS DISPLAY ***

(b)(7)(F)

(b)(7)(C)

CLAIMS MAINFRAME SYSTEM
APPLICATION UPDATE PROCESSING

10/06/2010
12:40

MODE: L
FORM: I821 RCPT NBR: (b)(7)(C) APPEALED FORM: (b)(7)(C) OWNER: EAC
PART 2: 2 PART 3: RECEIVED DT: 08/02/2010
A-NBR: A0 (b)(6), (b)(7)(C) REF NBR: ASSOC RCPT NBR:
NAME: (b)(6), (b)(7)(C)
C/O:
STREET: (b)(6), (b)(7)(C) CITY: NASHVILLE
STATE: TN PROVINCE: CNTRY: ZIP/POSTAL: 37211
GENDER: DOB: (b)(6), (b)(7)(C) COB: ELSAL CNTRY OF CITZ: SOC SEC #: (b)(6), (b)(7)(C)
EMPLOYER: TAX ID:
REP CODE: REP TYPE: (A=ATTY, B=CERT.REP, C=OTHER)
NAME:
FIRM: CLASS:
STREET:
STATE: PROVINCE: CNTRY: CITY:
ZIP/POSTAL:
STATUS/ACTION: IAE FNGPRNT FEE RECEIPT SENT
INS STATUS: UN NEW CLASS:
PRIORITY DATE: DATE VALID FROM: 00000000 TO:
(b)(7)(C) - VIEW MODE

(b)(7)(C)

(b)(7)C

CLAIMS/EAD MAINFRAME SYSTEM
EMPLOYMENT AUTHORIZATION DOCUMENT UPDATE/INQUIRY

10/06/2010

12:40

(b)(7)C

RCPT NBR: (b)(7)C A-NBR: A (b)(6), (b)(7)(C) REFERENCE NBR:
OWNED BY: EAC RECEIVED DATE: 08/02/2010
NAME: (b)(6), (b)(7)(C) SALVADOR
STREET: (b)(6), (b)(7)(C)
CITY: NASHVILLE STATE: TN ZIP: 37211 PHONE: 615-578- (b)(6)
CITZSHP: ELSAL COB: ELSAL DOB: (b)(6), (b)(7)(C) SEX: M
MAR STAT: M SSN NBR: (b)(6), (b)(7)(C) I94 NBR:
DATE ARR: 06052000 POE: MANNER LAST ENTRY: EWI CURRENT STATUS: UN
** TPS ** ABC MEMBER: N PHOTO ATTACHED(Y/N): Y
ELIGIBILITY: 274A.12(A) (12) PROV CODE: MULTIPLE(Y/N): N NONE(Y/N): N

(ENTER DATES AS MMDDCCYY) ISSUE CODE:
EMPLOYMENT START DATE: CARD ISSUE/DENIAL DATE:
EXPIRATION DATE: OFFICER ID: DENIAL CODE:
NAME ON CARD: SERIAL NBR:

(b)(7)C UPDATE NOT ALLOWED - RECEIPT OWNED BY EAC

(b)(7)C

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Order of Supervision

File No: (b)(6), (b)(7)(C)
Date: October 20, 2010

Name: (b)(6), (b)(7)(C)

on July 15, 2009, you were ordered:
(Date of final order)

Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
[X] Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- [X] That you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.
- [X] That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.
- [X] That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.
- [X] That you do not travel outside the State of Tennessee for more than 48 hours without first
(Specify geographic limits, if any)
having notified this Service office of the dates and places of such proposed travel.
- [X] That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.
- [X] That you report in person on December 1, 2010 to this Service office at:
(Deportation Section) US DHS/ICE 247 Venture Circle Nashville, TN unless you are granted written permission to report on another date.
- [X] That you assist the U.S. Immigration and Customs Enforcement in obtaining any necessary travel documents.
- [X] Other: Report the 1st Wednesday of each month
- [X] See attached sheet containing other specified conditions. (Continue on separate sheet if required)

(Signature of ICE official)

Philip Miller, FOD, New Orleans, Louisiana
(Print name and title of ICE official)

ON BOND
APPEAL PENDING
Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(b)(6), (b)(7)(C)

(Signature of ICE official serving order)

(Signature of alien)

Date

Form I-220B (Rev. 11/30/03)N

ICE ICE 2014 FOIA 61576000289 4

Form I-213 (Rev. 05/01/07)

Alien has been advised of communication privileges (Initials) _____		Received: (Subject and Document) (Report of Interview) _____ Officer: _____ Date: _____ Distribution: _____ Notice to Appear Detained (I-862) _____ Issuing Officer: _____	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FINS: (b)(6), (b)(7)(C), (b)(7)(D) Left Index Fingerprint (b)(6), (b)(7)(C) Right Index Fingerprint (b)(6), (b)(7)(C)			
Name, Address, and Nationality of Spouse (Include Name, if Applicable) _____ Number and Nationality of Minor Children _____ Employer's Name, Nationality, and Address, if Known _____ Blockade Debarment in U.S. Not in Immediate Possession Fingerprinted? ☐ Yes ☐ No Systems Check Charge Code Words Name and Address of (Last) Current U.S. Employer Type of Employment Salary Employed from to to		Immigration Record None Known Criminal Record None Known	
Date of Birth (b)(6), (b)(7)(C) Age: 28 Date of Action Location Code City, Province (State) and Country of Birth GUATEMALA NVV Issuing Post and NVV Number Date Visa Issued		Social Security Number Social Security Account Name AR (X) Form: (Type and No.) Unid ☐ Not Unid ☐ Date of Birth (b)(6), (b)(7)(C) Age: 28 Date of Action Location Code City, Province (State) and Country of Birth GUATEMALA NVV Issuing Post and NVV Number Date Visa Issued	
Family Name (CAPS) (b)(6), (b)(7)(C) Country of Citizenship (b)(6), (b)(7)(C) GUATEMALA U.S. Address (b)(6), (b)(7)(C) Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time Number, Street, City, Province (State) and Country of Permanent Residence _____ Date of Birth (b)(6), (b)(7)(C) Age: 28 Date of Action Location Code City, Province (State) and Country of Birth GUATEMALA NVV Issuing Post and NVV Number Date Visa Issued		F.B.I. Number Single ☐ Divorced ☐ Married ☐ Separated ☐ History of Location/Assignment (b)(7)(D) Address Date of Birth (b)(6), (b)(7)(C) Age: 28 Date of Action Location Code City, Province (State) and Country of Birth GUATEMALA NVV Issuing Post and NVV Number Date Visa Issued	
Sex Male Eyes Eyes Height (b)(6), (b)(7)(C) Weight (b)(6), (b)(7)(C) Occupation (b)(6), (b)(7)(C) Scars and Marks (b)(6), (b)(7)(C)		First Middle Last (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)	

Record of Deportable/Inadmissible Alien

Subject ID: (b)(6), (b)(7)(C)

U.S. Department of Homeland Security

Family Name (CAPS) (b)(6), (b)(7)(C)		First	Middle	Sex M	Hair (b)(6), (b)(7)(C)	Eyes (b)(6), (b)(7)(C)	Complexion (b)(6), (b)(7)(C)
Country of Citizenship MEXICO	Passport Number and Country of Issue		Case No. (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Height (b)(6), (b)(7)(C)	Weight (b)(6), (b)(7)(C)	Occupation (b)(6), (b)(7)(C)
U.S. Address				Start and Mark			
Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time				Passenger Boarded at			
Number, Street, City, Province (State) and Country of Permanent Residence				F.B.I. Number			
Date of Birth (b)(6), (b)(7)(C) Age: 26				Date of Action 10/20/2010		Location Code NOL/NSV	
City, Province (State) and Country of Birth MEXICO		AR ☒ Form: (Type and No.) Lifted ☐ Not Lifted ☐		Method of Location/Apprehension (b)(7)(C)			
NIV Issuing Post and NIV Number		Social Security Account Name		AV/Year 10/20/2010 1800			
Date Visa Issued		Social Security Number		By			
Immigration Record NEGATIVE - See Narrative		Criminal Record None Known		Status at Entry			
Name, Address, and Nationality of Spouse (Maiden Name, if Applicable)		Number and Nationality of Minor Children		Status When Found			
Father's Name, Nationality, and Address, if Known		Mother's Present and Maiden Name, Nationality, and Address, if Known		Length of Time Illegally in U.S.			
Moxies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? ☒ Yes ☐ No		Systems Checks		Charge Code Word(s)	
Name and Address of (Last) Current U.S. Employer		Type of Employment		Salary		Employed from/to	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
PINS: (b)(6), (b)(7)(C), (b)(7)(C) Left Index fingerprint Right Index fingerprint							
							
NCIC Level 3							
Alien has been advised of communication privileges _____ (Date/Initials)				(b)(6), (b)(7)(C) DEPORTATION OFFICER (Signature and Title of Immigration Officer)			
Distribution:				Received: (Subject and Documents) (Report of Interview)			
				Officer: (b)(6), (b)(7)(C)			
				on: October 20, 2010 at 2331 (time)			
				Disposition: Notice to Appear Detained (I-662)			
				Examining Officer: (b)(6), (b)(7)(C)			

Family Name (CAPS) (b)(6), (b)(7)(C)		First (b)(6), (b)(7)(C)	Middle (b)(6), (b)(7)(C)
Country of Citizenship HONDURAS	Passport Number and Country of Issue (b)(6), (b)(7)(C)	Case No. (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37214.			
Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time, UNK, Unknown		Passenger Boarded at	
Number, Street, City, Province (State) and Country of Permanent Residence			
Date of Birth (b)(6), (b)(7)(C)	Age: 23	Date of Action 10/20/2010	Location Code NOL/MSY-
City, Province (State) and Country of Birth OTR, HONDURAS		AR ☒ Form: (Type and No.)	Lifted ☐ Not Lifted ☐
NIV Issuing Post and NIV Number		Social Security Account Name	
Date Visa Issued		Social Security Number	
Immigration Record POSITIVE - See Narrative		Criminal Record See Narrative	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children	
Father's Name, Nationality, and Address, if Known		Mother's Present and Maiden Names, Nationality, and Address, if Known	
Monies Due/Property in U.S. Not in Immediate Possession None Claimed	Fingerprinted? ☒ Yes ☐ No	Systems Checks See Narrative	Charge Code Word(s)
Name and Address of (Last) Current U.S. Employer	Type of Employment	Salary	Employed from/to
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(7)			
Left Index fingerprint (b)(6), (b)(7)(C)		Right Index fingerprint (b)(6), (b)(7)(C)	
Traffic - Other			
OTHER ALIASES KNOWN BY: (b)(6), (b)(7)(C)			
ARRESTING AGENTS ... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		10/20/10 (b)(6), (b)(7)(C) (Date/Initials)	
Distribution: file agent		Received: (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) on: October 20, 2010 at 2241 (time) Disposition: Bag and Baggage Examinee Officer: (b)(6), (b)(7)(C)	

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)(e)		
(b)(6), (b)(7)(C)		
RECORDS CHECKED		
(b)(7)(e)		
Record of Deportable/Excludable Alien: On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C), an ICE fugitive was located near apt (b)(6), (b)(7)(C) Gang Unit Detective (b)(6), (b)(7)(C) located (b)(6), (b)(7)(C) in a back bedroom sitting on a bed with three children with a large knife where (b)(6), (b)(7)(C) was sitting. FOT officer arrived on scene and identified (b)(6), (b)(7)(C) as an ICE fugitive and placed (b)(6), (b)(7)(C) under arrest. (b)(6), (b)(7)(C) could not be positively identified as a gang member, but (b)(6), (b)(7)(C). (b)(7)(E) positively identified (b)(6), (b)(7)(C) with his immigration and criminal history with Alien Registration number (b)(6), (b)(7)(C) and FBI (b)(6), (b)(7)(C), (b)(7)(F). Only minor traffic related offenses were found in (b)(6), (b)(7)(C) criminal history, but (b)(6), (b)(7)(C) has been linked or rumored to be involved in strong arm robbery of other immigrants. (b)(6), (b)(7)(C) was ordered removed from the U.S. to Honduras by an immigration judge on December 16, 2009. A subsequent Warrant of Removal/Deportation for (b)(6), (b)(7)(C) was issued. (b)(6), (b)(7)(C) was provided consulate, legal, and all other detention related information. The outstanding order and Warrant of Removal/Deportation for (b)(6), (b)(7)(C) is being executed, and he will remain in ICE custody until removed from the U.S. to Honduras. Other: Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Sureños Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.		
Signature (b)(6), (b)(7)(C)	Title DEPORTATION OFFICER	

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Family Name (CAPS) (b)(6), (b)(7)(C)		First	Middle
Country of Citizenship HONDURAS	Passport Number and Country of Issue (b)(6), (b)(7)(C)	Case No. (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE,		Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time, UNK, Unknown	
Number, Street, City, Province (State) and Country of Permanent Residence		Passenger Boarded at	
Date of Birth (b)(6), (b)(7)(C)	Age: 19	Date of Action 10/20/2010	Location Code NOL/NSV
City, Province (State) and Country of Birth OTR, HONDURAS	AR ☒ Form: (Type and No.) Lined ☐ Not Lined ☐	Social Security Account Name	
NIV Issuing Post and NIV Number	Social Security Number		
Date Visa Issued	Criminal Record See Narrative		
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children	
Father's Name, Nationality, and Address, if Known		Mother's Present and Maiden Names, Nationality, and Address, if Known	
Monies Due/Property in U.S. Not in Immediate Possession None Claimed	Fingerprinted? ☒ Yes ☐ No	Systems Checks See Narrative	Charge Code Word(s)
Name and Address of (Last) Current U.S. Employer	Type of Employment	Salary	Employed from/to
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(7)		Left Index fingerprint	Right Index fingerprint
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)
None			
ARRESTING AGENTS			
(b)(6), (b)(7)(C)			
... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		(b)(6), (b)(7)(C) DEPORTATION OFFICER (Signature and Title of Immigration Officer)	
Distribution:		Received: (Subject and Document) (Report of Interview)	
file		Officer: (b)(6), (b)(7)(C)	
agent		on: October 20, 2010 at 1800 (time)	
		Disposition: REINSTATEMENT OF DEPORT ORDER I-871	
		Examining Officer: (b)(6), (b)(7)(C)	

Family Name (CAFS)		First	Middle
(b)(6), (b)(7)(C)			
Country of Citizenship	Passport Number and Country of Issue		Case No. (b)(6), (b)(7)(C)
HONDURAS			
U.S. Address			
(b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217,			
Date, Place, Time, and Manner of Last Entry		Passenger Boarded at	
3/1/2003, Unknown Time, ECP, IWI			
Number, Street, City, Province (State) and Country of Permanent Residence			
Date of Birth	Age: 32	Date of Action	Location Code:
(b)(6), (b)(7)(C)		10/20/2010	NOL/NSV
City, Province (State) and Country of Birth		Form: (Type and No.) Lifted ☐ Not Lifted ☐	
DANLI, HONDURAS		AR ☒	
NIV Issuing Post and NIV Number		Social Security Account Name	
Date Visa Issued		Social Security Number	
Immigration Record		Criminal Record	
NEGATIVE - See Narrative		See Narrative	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children	
		2, HONDURAN	
Father's Name, Nationality, and Address, if Known		Mother's Present and Maiden Names, Nationality, and Address, if Known	
(b)(6), (b)(7)(C) NATIONALITY: HONDURAS		(b)(6), (b)(7)(C) NATIONALITY: HONDURAS	
ADDRESS: HONDURAS		ADDRESS: HONDURAS	
Monies Due/Property in U.S. Not in Immediate Possession		Fingerprinted? ☒ Yes ☐ No	Systems Checks
None Claimed			(b)(6), (b)(7)(C)
Name and Address of (Last/Current) U.S. Employer		Type of Employment	Salary
			11 / / / /
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(7)			
Left Index fingerprint		Right Index fingerprint	
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	
Record of Deportable/Excludable Alien:			
On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Drive (Clairmont Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		(Date/Initials)	
		(b)(6), (b)(7)(C)	
Distribution:		Received: (Subject and Documents) (Report of Interview)	
		Officer: (b)(6), (b)(7)(C)	
		on: October 20, 2010 (time)	
		Disposition: Warrant of Arrest/Notice to Appear	
		Examinee Officer: (b)(6), (b)(7)(C)	

Form I-213 (Rev. 05/01/07)

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)(C)		
from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C) a native and citizen of Mexico, was located near apartment (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) last entered the United States as stated above without inspection by an Immigration Officer. (b)(7)(C) revealed that (b)(6), (b)(7)(C) has a criminal history under FBI# (b)(6), (b)(7)(C), (b)(7)(C). (b)(6), (b)(7)(C) was arrested on February 20, 2010 by Metro Nashville Police for Driving Without a License. (b)(6), (b)(7)(C) was processed for removal under INA, Section 212(a)(6)(A)(i), and held in ICE custody on a \$5000 bond. (b)(6), (b)(7)(C) has no known medical issues. (b)(6), (b)(7)(C) has no family members in the U.S. Other: Several other (USC) possible juvenile gang members from 7OP (Seven Oaks Park) MS-13 clique and SLC (Sureños Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.		
Signature (b)(6), (b)(7)(C)	Title SENIOR SPECIAL AGENT	

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Form I-213 (Rev. 08/01/07)

Family Name (CAFS)		(b)(6), (b)(7)(C), (b)(7)(D)	
Country of Citizenship		GUATEMALA	
U.S. Address		NASHVILLE, TENNESSEE, 37217	
Date, Place, and Manner of Last Entry		Date: 10/21/2010 Place: Unknown Manner: Unknown	
Number, Street, City, State, and Country of Permanent Residence		DOMICILIO CONOCIDO GUATEMALA	
Date of Birth		(b)(6), (b)(7)(C)	
Age		27	
City, Province (State), and Country of Birth		GUATEMALA	
MVA Issuing Post and MVA Number			
Social Security Number			
Social Security Account Name			
Date of Action		10/21/2010	
Location Code		NOT/NSV	
Form: (Type and No.)		AR [X] Form: [Type and No.] Lined [] Not Lined []	
FBI Number		(b)(6), (b)(7)(C), (b)(7)(D)	
Method of Location/Arrest		[] Single [] Divorced [] Separated [] Widowed [] Other	
Scars and Marks		None Indicated	
Height		(b)(6), (b)(7)(C)	
Weight		(b)(6), (b)(7)(C)	
Occupation		Roofers	
Sex		M	
Hair		(b)(6), (b)(7)(C)	
Eyes		(b)(6), (b)(7)(C)	
Complexion		(b)(6), (b)(7)(C)	
Length of Time Legally in U.S.		OVER 1 YEAR	
Status at Entry		Seeking Employment	
Status When Found		Seeking Employment	
By		See Narrative	
Date/Time		10/20/2010 1800	
MVA/Driver's License		None	
Fingerprints		[] Yes [] No	
Change Code Words		None	
Most Recent U.S. Entry		None Claimed	
Name and Address of (Last) U.S. Employer			
Type of Employment		None	
Salary		None	
Employed From/To		None	
Narrative (Outline pertinent under which alien was located/arrested. Indicate means and route of travel to interior.)		None	
Right Index Fingerprint		(b)(6), (b)(7)(C)	
Left Index Fingerprint		(b)(6), (b)(7)(C)	
Arresting Agents		(b)(6), (b)(7)(C)	
None			
RINS: (b)(6), (b)(7)(C), (b)(7)(D)			
Alien has been advised of communication privileges		[] Yes [] No	
Distribution:			
Received: (Subject and Documents) (Report of Interview)		(b)(6), (b)(7)(C)	
Officer: (b)(6), (b)(7)(C)			
on: October 21, 2010			
Notice to Appear Detained (I-862)		(b)(6), (b)(7)(C)	
Disposition:		(b)(6), (b)(7)(C)	
Examining Officer: (b)(6), (b)(7)(C)			

Record of Deportable/Inadmissible Alien

Subject ID: (b)(6), (b)(7)(C)

U.S. Department of Homeland Security

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C) Event No: (b)(7)(C)	Date 10/20/2010
(b)(6), (b)(7)(C)		
RECORDS CHECKED ----- (b)(7)(C)		
Record of Deportable/Excludable Alien: On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C) was located near (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) is a citizen of Guatemala and presented a Guatemala Consular ID card. (b)(6), (b)(7)(C) will now be assigned (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) does not have any criminal history. (b)(6), (b)(7)(C) was provided consulate, legal, and all other detention related information. (b)(6), (b)(7)(C) will be processed as a Notice to Appear under 212(a)(6)(A)(i) and will be held with a \$5000 bond. Other: Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Sureños Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.		
Signature (b)(6), (b)(7)(C)	Title DEPORTATION OFFICER	

2 of 2 Pages

[illegible]

Record of Deportable/Inadmissible Alien

Subject ID : (b)(6), (b)(7)(C)

U.S. Department of Homeland Security

File Number	Event No.	Date	Alien's Name	Record of Deportable/Excludable Alien:
(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	10/20/2010		On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Clatsop Apts) by the Nashville, TN fugitive operations team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals possibly identified as known gang members and previously targeted ICE fugitives. One individual, [REDACTED] an ICE fugitive was located near [REDACTED] Gang Unit Detective [REDACTED] ICE fugitive and placed [REDACTED] under arrest. [REDACTED] could not be positively identified as a gang member, but [REDACTED] a citizen and national of Guatemala. Subsequent to questioning, Agents determined that [REDACTED] was illegally present in the United States. Subject was arrested for violating the INA, as amended, and transported to the RAC/Nashville office for applicable processing. Subject did not claim any health related issues. Scars/Tattoos: None Visible. Other Agencies Involved: Nashville Metro Gang Unit / ICE ERO Fugitive Operations CRIMINAL RECORD: None located. IMMIGRATION RECORD: None located. Equities in the United States: None claimed. Subject is removable under the following sections of the INA as amended: EWI Section 212 (a) (6) (A) (1). Other: Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Surren Losos Criminals) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE Officers.

Family Name (CAPI)		First	Middle
(b)(6), (b)(7)(C)			
Country of Citizenship	Passport Number and Country of Issue	Case No.	File Number
HONDURAS		A098913823	(b)(6), (b)(7)(C)
U.S. Address			
(b)(6), (b)(7)(C) NASHVILLE, TENNESSEE,			
Date, Place, Time, and Manner of Last Entry		Passenger Boarded at	
Unknown Date, Unknown Time, UNK, Unknown			
Number, Street, City, Province (State) and Country of Permanent Residence			
(b)(6), (b)(7)(C) CHOLUTECA, HONDURAS			
Date of Birth	Age	Date of Action	Location Code
(b)(6), (b)(7)(C)	30	10/20/2010	NOL/NSV
City, Province (State) and Country of Birth		AR ☒	Form: (Type and No.) Lifted ☐ Not Lifted ☐
NAGASIQUE, HONDURAS, HONDURAS			
NIV Issuing Post and NIV Number		Social Security Account Name	
Date Visa Issued		Social Security Number	
Immigration Record		Criminal Record	
POSITIVE - See Narrative		See Narrative	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children	
		2 HONDURAS	
Father's Name, Nationality, and Address, if Known		Mother's Present and Maiden Names, Nationality, and Address, if Known	
(b)(6), (b)(7)(C) NATIONALITY: HONDURAS		(b)(6), (b)(7)(C) NATIONALITY: HONDURAS	
ADDRESS: SPA		ADDRESS: SPA	
Modest Due/Property in U.S. Not in Immediate Possession		Fingerprinted? ☒ Yes ☐ No	Systems Checks
None Claimed			See Narrative
Name and Address of (Last) Current U.S. Employer		Type of Employment	Salary
			Employed from/to
			He / / / /
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(6), (b)(7)(C)			
Left Index fingerprint		Right Index fingerprint	
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	
Traffic - Other			
SCARS, MARKS, AND TATTOOS			
(b)(6), (b)(7)(C)			
ARRESTING AGENTS			
... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		(Date/Initials)	
		(b)(6), (b)(7)(C)	
Distribution:		DEPORTATION OFFICER	
AFILE		(Signature and Title of Immigration Officer)	
		Received: (Subject and Documents) (Report of Interview)	
		Officer: (b)(6), (b)(7)(C)	
		on: October 20, 2010 at 2300 (time)	
		Disposition: REINSTATEMENT OF DEPORT ORDER I-871	
		Examining Officer: (b)(6), (b)(7)(C)	

Alien's Name

(b)(6), (b)(7)(C)

File Number

(b)(6), (b)(7)(C)

Date

10/20/2010

Event No:

(b)(7)(e)

(b)(6), (b)(7)(C)

RECORDS CHECKED

(b)(7)(e)

FUNDS IN POSSESSION

United States Dollar .00

Signature

(b)(6), (b)(7)(C)

Title

DEPORTATION OFFICER

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Family Name (CAPS) (b)(6), (b)(7)(C)		First (b)(6), (b)(7)(C)	Middle (b)(6), (b)(7)(C)	Sex M	Hair (b)(6), (b)(7)(C)	Eyes (b)(6), (b)(7)(C)	Complexion (b)(6), (b)(7)(C)
Country of Citizenship HONDURAS	Passport Number and Country of Issue (b)(6), (b)(7)(C)		Case No. (b)(6), (b)(7)(C)	Height (b)(6), (b)(7)(C)	Weight (b)(6), (b)(7)(C)	Occupation LABORER	
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE,				Scars and Marks None Visible			
Date, Place, Time, and Manner of Last Entry 09/01/2009, Unknown Time, ELP, ENTRY WITHOUT INSPECTION				F.B.I. Number (b)(6), (b)(7)(C)			
Number, Street, City, Province (State) and Country of Permanent Residence (b)(6), (b)(7)(C)				F.B.I. Number (b)(6), (b)(7)(C)			
Date of Birth (b)(6), (b)(7)(C)	Age: 25	Date of Action 10/20/2010	Location Code NOL/NSV	F.B.I. Number (b)(6), (b)(7)(C)		F.B.I. Number (b)(6), (b)(7)(C)	
City, Province (State) and Country of Birth UNKNOWN, UNKNOWN, HONDURAS		Form: (Type and No.) Liked ☐ Not Liked ☐		Status at Entry PWA Other		Status When Found IN TRAVEL	
NIV Issuing Post and NIV Number		Social Security Account Name		Length of Time Illegally in U.S. OVER 1 YEAR		Length of Time Illegally in U.S. OVER 1 YEAR	
Date Visa Issued		Social Security Number		Criminal Record None Known		Criminal Record None Known	
Immigration Record NEGATIVE - See Narrative		Criminal Record None Known		Number and Nationality of Minor Children		Number and Nationality of Minor Children	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Mother's Present and Maiden Names, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: HONDURAS ADDRESS: SAME AS SUBJECT		Fingerprints? ☒ Yes ☐ No		Systems Checks See Narrative	
Moses Due/Property in U.S. Not in Immediate Possession None Claimed		Type of Employment		Salary		Employed from/to	
Name and Address of (Last/Current) U.S. Employer		Type of Employment		Salary		Employed from/to	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
PINS: (b)(6), (b)(7)(C), (b)(7)		Left Index fingerprint		Right Index fingerprint		Right Index fingerprint	
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	
RECORDS CHECKED (b)(7)(C)							
... (CONTINUED ON I-831)							
Alien has been advised of communication privileges (Date/Initials)				(b)(6), (b)(7)(C) SENIOR SPECIAL AGENT (Signature and Title of Immigration Officer)			
Distribution: IN FILE XNV ERO				Received: (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) on: October 20, 2010 (time) Disposition: Warrant of Arrest/Notice to Appear Examine Officers: (b)(6), (b)(7)(C)			

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C) Event No: (b)(7)(C)	Date 10/20/2010
Record of Deportable/Excludable Alien: On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C), an ICE fugitive was located near (b)(6), (b)(7)(C) Gang Unit Detective (b)(6), (b)(7)(C) located (b)(6), (b)(7)(C) in a back bedroom sitting on a bed with three children with a large knife where (b)(6), (b)(7)(C) was sitting. FOT officer arrived on scene and identified (b)(6), (b)(7)(C) as an ICE fugitive and placed (b)(6), (b)(7)(C) under arrest. (b)(6), (b)(7)(C) could not be positively identified as a gang member, but (b)(6), (b)(7)(C). Also encountered during the operation was (b)(6), (b)(7)(C) a citizen and national of Honduras. Subsequent to questioning, Agents determined that (b)(6), (b)(7)(C) was illegally present in the United States. Subject was arrested for violating the INA, as amended, and transported to the RAC/Nashville office for applicable processing. Subject did not claim any health related issues. Scars/Marks/Tattoos: None Visible. Other Agencies involved: Nashville METRO Gang Unit / ICE ERO Fugitive Operations CRIMINAL RECORD: None located. IMMIGRATION RECORD: None Located. Equities in the United States: None claimed. Subject is removable under the following sections of the INA as amended: EWI Section 212 (a) (6) (A) (i). Other: Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Surenos Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE Officers.		
Signature (b)(6), (b)(7)(C)	Title SENIOR SPECIAL AGENT	

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Family Name (CAPS) (b)(6), (b)(7)(C)		First	Middle
Country of Citizenship HONDURAS	Passport Number and Country of Issue	Case No. (b)(6), (b)(7)(C)	File Number (b)(7)(C)
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE		Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time, UNK. Unknown	
Number, Street, City, Province (State) and Country of Permanent Residence (b)(6), (b)(7)(C) OCOTEPECE, HONDURAS		Passenger Boarded at	
Date of Birth (b)(6), (b)(7)(C)	Age: 30	Date of Action 10/20/2010	Location Code NOL/NSV
City, Province (State) and Country of Birth OCOTEPECE, LUSERNA, HONDURAS		Form: (Type and No.) Lifted ☐ Not Lifted ☐	
NIV Issuing Post and NIV Number		Social Security Account Name	
Date Visa Issued		Social Security Number	
Immigration Record POSITIVE - See Narrative		Criminal Record None Known	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children 1 HONDURAS	
Father's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: HONDURAS ADDRESS: SPA		Mother's Present and Maiden Names, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: HONDURAS ADDRESS: SPA	
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprints? ☒ Yes ☐ No	Systems Checks See Narrative
Name and Address of (Last/Current) U.S. Employer		Type of Employment	Salary W / / / /
Employed from/to			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
PINS: (b)(6), (b)(7)(C), (b)(7)		Left Index fingerprint	
			
None		Right Index fingerprint	
			
ARRESTING AGENTS (b)(6), (b)(7)(C)			
... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		(Date/Initials)	
Distribution: AFILE		Received: (Subject and Documents) (Report of Interview)	
		Officer: (b)(6), (b)(7)(C)	
		on: October 20, 2010 at 2300 (time)	
		Disposition: REINSTATEMENT OF DEPORT ORDER I-871	
		Examine Officer: (b)(6), (b)(7)(C)	

Form I-213 (Rev. 05/01/07)

Family Name (CAPS) (b)(6), (b)(7)(C)		First (b)(6), (b)(7)(C)	Middle (b)(6), (b)(7)(C)
Country of Citizenship GUATEMALA	Passport Number and Country of Issue (b)(6), (b)(7)(C)	Case No. (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217,			
Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time, UNK, Unknown		Passenger Boarded at	
Number, Street, City, Province (State) and Country of Permanent Residence (b)(6), (b)(7)(C) GUATEMALA, GUATEMALA			
Date of Birth (b)(6), (b)(7)(C)	Age: 28	Date of Action 10/20/2010	Location Code NOL/NSV
City, Province (State) and Country of Birth BAJA VERAPAZ, OTR, GUATEMALA		AR ☒ Form (Type and No.) Lined ☐ Not Lined ☐	
NIV Issuing Post and NIV Number		Social Security Account Name	
Date Visa Issued		Social Security Number	
Immigration Record POSITIVE - See Narrative		Criminal Record None Known	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children NONE	
Father's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: GUATEMALA		Mother's Present and Maiden Names, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: GUATEMALA	
Monies Due/Property in U.S. Not in Immediate Possession None Claimed	Fingerprinted? ☒ Yes ☐ No	System Checks See Narrative	Charge Code Word(s)
Name and Address of (Last) Current U.S. Employer LSI NASHVILLE, TN	Type of Employment	Salary 14 / / /	Employed from/to / / /
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(7)(D)			
Left Index fingerprint (b)(6), (b)(7)(C)		Right Index fingerprint (b)(6), (b)(7)(C)	
None			
ARRESTING AGENTS (b)(6), (b)(7)(C)			
... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		10/21/10 (Date/Initials)	
Distribution:		Received: (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) on: October 20, 2010 at 2329 (time) Disposition: Notice to Appear Detained (I-862) Examining Officer: (b)(6), (b)(7)(C)	

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)(C)		

(b)(6), (b)(7)(C)

RECORDS CHECKED

(b)(7)(C)

Record of Deportable/Excludable Alien:

On October 20, 2010, a joint enforcement operation was conducted at (b)(6), (b)(7)(C) (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity.

This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C) was located near (b)(6), (b)(7)(C)

IDENT positively identified (b)(6), (b)(7)(C). He has one prior arrest by the US Border Patrol on 02/03/08. At that time he claimed that his name was (b)(6), (b)(7)(C) and that he was a citizen of Mexico and processed as a Voluntary Return. (b)(6), (b)(7)(C) is a citizen of Guatemala and will now be assigned (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) does not have any criminal history.

(b)(6), (b)(7)(C) was provided consulate, legal, and all other detention related information.

(b)(6), (b)(7)(C) will be processed as a Notice to Appear under 212(a)(6)(A)(i) and will be held with a \$5000 bond.

Other: Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Sureños Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.

Signature

(b)(6), (b)(7)(C)

Title

DEPORTATION OFFICER

2 of 2 Pages

U.S. Department of Homeland Security Subject ID: (b)(6), (b)(7)(C) Record of Deportable/Inadmissible Alien

Family Name (CAFS)		(b)(6), (b)(7)(C)	
Country of Citizenship		HONDURAS	
U.S. Address		(b)(6), (b)(7)(C)	
Date, Place, Time, and Manner of Last Entry		Unknown Date, Unknown Place, Unknown Manner, Unknown	
Number, Street, City, Province (State) and Country of Permanent Residence		(b)(6), (b)(7)(C)	
Date of Birth		(b)(6), (b)(7)(C)	
City, Province (State) and Country of Birth		(b)(6), (b)(7)(C)	
NIV Issuing Post and NIV Number		(b)(6), (b)(7)(C)	
Date Visa Issued		(b)(6), (b)(7)(C)	
Immigration Record		POSITIVE - See Narrative	
Name, Address, and Nationality of Spouse (Maiden Name, if Applicable)		(b)(6), (b)(7)(C)	
Father's Name, Nationality, and Address, if Known		(b)(6), (b)(7)(C)	
Mones Dues/Property in U.S. Not in Immediate Possession		None Claimed	
Fingerprints		Fingerprints: ☒ Yes ☐ No	
Systems Checks		Systems Checks: ☒ Yes ☐ No	
Charge Code (Words)		(b)(6), (b)(7)(C)	
Name and Address of (Last) Current U.S. Employer		(b)(6), (b)(7)(C)	
Type of Employment		(b)(6), (b)(7)(C)	
Salary		(b)(6), (b)(7)(C)	
Employed from/to		(b)(6), (b)(7)(C)	
Narrative (Outline particulars under which alien was located/apprehended. Indicate means and route of travel to interior. Indicate details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and		(b)(6), (b)(7)(C)	
FINS: (b)(6), (b)(7)(C), (b)(7)(C)		(b)(6), (b)(7)(C)	
ARRESTING AGENTS		(b)(6), (b)(7)(C)	
NCIC Level 3		(b)(6), (b)(7)(C)	
DEPORTATION OFFICER		(b)(6), (b)(7)(C)	
Received: (Subject and Document) (Report of Interview)		(b)(6), (b)(7)(C)	
Officer: (b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	
on: October 20, 2010 at 2317		(b)(6), (b)(7)(C)	
Disposition: Day and Baggage		(b)(6), (b)(7)(C)	
Examining Officer: (b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	

Form I-213 (Rev. 08/01/07)

SLC - Sun 13
Gang member

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)(C)		
RECORDS CHECKED (b)(7)(C)		
Record of Deportable/Excludable Alien: On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C) an ICE fugitive was located near (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) is a known SUR 13 gang member affiliated with the SLC (Surenos Locos Criminales) clique and (b)(6), (b)(7)(C) was previously targeted for apprehension with Nashville Metro Gang Unit during a search warrant at his last known residence. (b)(7)(C) positively identified (b)(6), (b)(7)(C) with his immigration and criminal history with Alien Registration number (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) criminal history is not associated with an FBI number due to most crimes being committed as a juvenile. Conviction documents from juvenile court in Nashville, TN show (b)(6), (b)(7)(C) has been convicted of Assault and Drug Paraphernalia charges. (b)(6), (b)(7)(C) was ordered removed from the U.S. to Honduras by an immigration judge on July 23, 2003. A subsequent Warrant of Removal/Deportation for (b)(6), (b)(7)(C) was issued. (b)(6), (b)(7)(C) was provided consulate, legal, and all other detention related information. The outstanding order and Warrant of Removal/Deportation for (b)(6), (b)(7)(C) is being executed, and he will remain in ICE custody until removed from the U.S. to Honduras. Other: Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Surenos Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.		
Signature (b)(6), (b)(7)(C)	Title DEPORTATION OFFICER	

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Family Name (CAFS)		First		Middle		Last	
Country of Citizenship		Passport Number and Country of Issue		Date of Birth		Date of Entry	
Honduras		Honduras		10/20/2010		10/20/2010	
U.S. Address		Nashville, Tennessee, 37211		Unknown Date, Unknown Time, Unknown Location		Unknown Date, Unknown Time, Unknown Location	
Number, Street, City, Province (State) and Country of Permanent Residence		SANTA ROSA, HONDURAS		SANTA ROSA, HONDURAS		SANTA ROSA, HONDURAS	
Date of Birth		Age: 40		Date of Action		Location Code	
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)		10/20/2010		NOL/NSV	
City, Province (State) and Country of Birth		Form: Type and No. Listed ☐ Not Listed ☐		AR ☒		Social Security Account Number	
NIV Issuing Post and NIV Number		Social Security Number		Criminal Record		See Narrative	
Name, Address, and Nationality of Spouse (Include Name, if Applicable)		Number and Nationality of Minor Children		Mother's Present and Mailed Name, Nationality, and Address, if Known		(b)(6), (b)(7)(C)	
None Claimed		Fingerprints? ☐ Yes ☐ No		Systems Checks		Charge Code (Words)	
None Claimed		Fingerprints? ☐ Yes ☐ No		Systems Checks		Charge Code (Words)	
Name and Address of (Last) U.S. Employer		Type of Employment		Salary		Employed from/to	
None Claimed		Type of Employment		Salary		Employed from/to	
Narrative (Outline particular under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)		Left Index fingerprint		Right Index fingerprint			
Records Checked		Other Criminal					
Agent		A File		Distribution:			
Examining Officer:		Division:		on:		October 20, 2010 at 2307	
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	
Signature and Title of Immigration Officer		Immigration Enforcement Agent		Received: (Subject and Document) (Report of Interview)		(b)(6), (b)(7)(C)	
Form 1-213 (Rev. 05/01/07)							

Record of Deportable/Inadmissible Alien

Subject ID : (b)(6), (b)(7)(C)

U.S. Department of Homeland Security

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)(C)		
Record of Deportable/Excludable Alien: (b)(6), (b)(7)(C) was arrested without incident by the Nashville, TN FUGOPS Team near (b)(6), (b)(7)(C) Nashville, TN and processed as an Immigration Fugitive. (b)(6), (b)(7)(C) is a citizen and native of Honduras who was ordered removed from the United States by an Immigration Judge on 12/09/2004. (b)(6), (b)(7)(C) was convicted of Trespassing in Davidson County, Tennessee on 04/26/07. (b)(6), (b)(7)(C) was processed as an Immigration Fugitive and will be held in ICE custody pending his removal.		
Signature (b)(6), (b)(7)(C)	Title Immigration Enforcement Agent	

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Family Name (CAPS) (b)(6), (b)(7)(C)		First (b)(6), (b)(7)(C)	Middle (b)(6), (b)(7)(C)
Country of Citizenship MEXICO	Passport Number and Country of Issue (b)(6), (b)(7)(C)	Case No. (b)(6), (b)(7)(C)	(b)(7)(C)
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217,			
Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time, UNK, EMT		Passenger Boarded at	
Number, Street, City, Province (State) and Country of Permanent Residence			
Date of Birth (b)(6), (b)(7)(C)	Age: 42	Date of Action 10/20/2010	Location Code NOL/NSV
City, Province (State) and Country of Birth MEXICO	AR ☒ Form: (Type and No.)	Lifted ☐ Not Lifted ☐	
NIV Issuing Post and NIV Number	Social Security Account Name		
Date Visa Issued	Social Security Number		
Immigration Record NEGATIVE - See Narrative		Criminal Record None Known	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Number and Nationality of Minor Children NONE	
Father's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO		Mother's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO	
Modies Due/Property in U.S. Not in Immediate Possession None Claimed	Fingerprinted? ☒ Yes ☐ No	System Checks See Narrative	Charge Code Word(s)
Name and Address of (Last/Current) U.S. Employer	Type of Employment	Salary	Employed from/to
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(7)(C)		Left Index fingerprint	
			
None			
ARRESTING AGENTS (b)(6), (b)(7)(C)			
... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		(Date/Initials)	
Distribution: CIS A-FILE AGENT		Received: (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) Date: October 20, 2010 at 2312 (time) Disposition: Notice to Appear Detained (I-862) Examinee Officer: (b)(6), (b)(7)(C)	

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)e		
RECORDS CHECKED (b)(7)e		
Signature (b)(6), (b)(7)(C)		Title Deportation Officer

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Form I-213 (Rev. 08/01/07)

Alien has been advised of communication privileges (Date/Initials) _____ (b)(6), (b)(7)(C)		Received: (Subject and Document) (Report of Interview) (b)(6), (b)(7)(C)		Office: (b)(6), (b)(7)(C) Date: October 20, 2010 at 2336 (hms) Disposition: Notice to Appear Detained (1-862)		Examining Officer: (b)(6), (b)(7)(C)	
DEPORTATION OFFICER (b)(6), (b)(7)(C)							
None							
Narrative (Outline particulars under which alien was located/apprehended. Include means and route of travel to interior.) FINS: (b)(6), (b)(7)(C), (b)(7)(F) Left Index Fingerprint (b)(6), (b)(7)(C) Right Index Fingerprint (b)(6), (b)(7)(C)							
Name and Address of (Last)(Current) U.S. Employer Type of Employment Salary Employed from/to None Claimed							
Knowns Due/Proposed in U.S. Not in knowledge of Section Fingerprinted? ☒ Yes ☐ No Systems Checks Change Code Words?							
Father's Name, Nationality, and Address, if Known Mother's Present and Maiden Names, Nationality, and Address, if Known							
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) Number and Nationality of Minor Children							
Immigration Record Criminal Record None Known							
Date Visa Issued Social Security Number Social Security Account Name NIV Issued For and NIV Number City, Province (State) and Country of Birth Date of Birth (b)(6), (b)(7)(C) Age: 51 Location Code Date of Action 10/20/2010 Location Code Number, Street, City, Province (State) and Country of Permanent Residence Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time U.S. Address Country of Citizenship Family Name (CAF) (b)(6), (b)(7)(C) First Middle Last Case No. (b)(6), (b)(7)(C) Passport Number and Country of Issue Height Weight (b)(6), (b)(7)(C) Occupation (b)(6), (b)(7)(C) Sex M Hair Eyes Complexion (b)(6), (b)(7)(C)							
Length of Time Illegally in U.S. Status at Entry Status When Found By Date/Time 10/20/2010, 1800 Method of Location/Apprehension F.U.L. Number Single ☐ Divorced ☐ Married ☐ Widowed ☐ Separated ☐ Scars and Marks							

Record of Deportable/Inadmissible Alien

Subject ID (b)(6), (b)(7)(C)

U.S. Department of Homeland Security

U.S. Department of Homeland Security

Subject ID (b)(6), (b)(7)(C)

Record of Deportable/Inadmissible Alien

Family Name (CAPS) (b)(6), (b)(7)(C)		First	Middle	Sex M	Hair (b)(6), (b)(7)(C)	Eyes (b)(6), (b)(7)(C)	Complexion (b)(6), (b)(7)(C)
Country of Citizenship MEXICO	Passport Number and Country of Issue (b)(6), (b)(7)(C)	Case No. (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Height (b)(6), (b)(7)(C)	Weight (b)(6), (b)(7)(C)	Occupation (b)(6), (b)(7)(C)	
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217				Scars and Marks			
Date, Place, Time, and Manner of Last Entry 04/01/2004, Unknown Time, SYS, GHI				F.B.I. Number (b)(6), (b)(7)(C), (b)(7)			
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension (b)(7)(e)			
Date of Birth (b)(6), (b)(7)(C)	Age 34	Date of Action 10/20/2010	Location Code NOL/NSV	FBI Number (b)(6), (b)(7)(C), (b)(7)		Status ☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated	
City, Province (State) and Country of Birth MEXICO	AR ☒ F (Type and No.)		Lifted ☐ Not Lifted ☐	Date/Time 10/20/2010 1800		Status at Entry PWA Mexico	
NIV Issuing Post and NIV Number	Social Security Account Name		Social Security Number		Length of Time Illegally in U.S. OVER 1 YEAR		
Date Visa Issued	Criminal Record None Known		Number and Nationality of Minor Children 1, MEXICAN				
Name, Address, and Nationality of Spouse (If Known) (b)(6), (b)(7)(C) NATIONALITY: MEXICO				Mother's Present and Maiden Names, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO			
Address: MEXICO				Address: MEXICO			
Fingerprints? ☒ Yes ☐ No				Systems Checks (b)(7)(e)		Charge Code Word(s)	
Mosaic Due/Property in U.S. Not in Immediate Possession None Claimed				Employed from/to			
Name and Address of (Last) Current U.S. Employer				Type of Employment		Salary	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
FINS: (b)(6), (b)(7)(C), (b)(7)		Left Index fingerprint (b)(6), (b)(7)(C)		Right Index fingerprint (b)(6), (b)(7)(C)			
Record of Deportable/Excludable Alien: On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts... (CONTINUED ON I-831)							
Alien has been advised of communication privileges				(Date/Initials) SENIOR SPECIAL AGENT (Signature and Title of Immigration Officer)			
Distribution:				Received: (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) on: October 20, 2010 (time) Disposition: Warrant of Arrest/Notice to Appear Examining Officer: (b)(6), (b)(7)(C)			

Form I-213 (Rev. 08/01/07)

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Date 10/20/2010
Event No: (b)(7)(C)		
from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One of the individuals arrested in (b)(6), (b)(7)(C) was (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) was provided consulate, legal, and all other detention related information. He appears in good health and claimed no health problems. Other: Several other (USC) possible juvenile gang members from 7OP (Seven Oaks Park) MS-13 clique and SLC (Sureños Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.		
Signature (b)(6), (b)(7)(C)	Title SENIOR SPECIAL AGENT	

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U.S. Department of Homeland Security

Subject ID : (b)(6), (b)(7)(C)

Record of Deportable/Inadmissible Alien

Family Name (CAPS) First Middle (b)(6), (b)(7)(C)		Country of Citizenship MEXICO		Passport Number and Country of Issue (b)(6), (b)(7)(C)		Case No. (b)(6), (b)(7)(C)		File Number (b)(6), (b)(7)(C)	
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217,		Date, Place, Time, and Manner of Last Entry 5/1/2001, Unknown Time, NOG, EMI		Passenger Boarded at		Sex M		Hair (b)(6), (b)(7)(C)	
Number, Street, City, Province (State) and Country of Permanent Residence		Date of Birth (b)(6), (b)(7)(C) Age: 30		Date of Action 10/20/2010		Location Code NOL/NSV		Height (b)(6), (b)(7)(C)	
City, Province (State) and Country of Birth OAXACA, MEXICO		AR ☒ Form: (Type and No.) ☐ Lifted ☐ Not Lifted ☐		Social Security Account Name		F.B.I. Number (b)(6), (b)(7)(C)		Weight (b)(6), (b)(7)(C)	
NIV Issuing Post and NIV Number		Social Security Number		Social Security Account Name		Method of Location/Apprehension (b)(6), (b)(7)(C)		Occupation LABORER	
Date Visa Issued		Immigration Record NEGATIVE - See Narrative		Criminal Record None Known		Status at Entry PWA Mexico		Status When Found TRAVEL/SEEKING	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)		Father's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO ADDRESS: DECEASED		Mother's Present and Maiden Names, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO ADDRESS: SAME AS SUBJECT		Length of Time Illegally in U.S. AT ENTRY		By (b)(6), (b)(7)(C)	
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? ☒ Yes ☐ No		Systems Check See Narrative		Charge Code Word(s)		Sears and Marks (b)(6), (b)(7)(C)	
Name and Address of (Last/Current) U.S. Employer ROOFING NASHVILLE, TN		Type of Employment See Narrative		Salary \$ / hr / 10/20/2010		Employed from/to / / 10/20/2010		FBI Number (b)(6), (b)(7)(C)	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior)									
FINS: (b)(6), (b)(7)(C), (b)(7)(C)									
Left Index fingerprint (b)(6), (b)(7)(C)									
Right Index fingerprint (b)(6), (b)(7)(C)									
RECORDS CHECKED (b)(6), (b)(7)(C)									
TYPE OF EMPLOYMENT ... (CONTINUED ON I-831)									
Alien has been advised of communication privileges (b)(6), (b)(7)(C) (Date/Initials)									
Distribution: IN FILE XNV CASE FILE									
Received. (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) on: October 20, 2010 (time) Disposition: Warrant of Arrest/Notice to Appear Examining Officer: (b)(6), (b)(7)(C)									

Form I-213 (Rev. 08/01/07)

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C) Event No: (b)(7)(C)	Date 10/20/2010
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Operators, Fabricators, and Laborers

Record of Deportable/Excludable Alien:

On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity.

This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C) an illegal alien from Mexico was arrested in (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) granted permission to ICE Special Agent (b)(6), (b)(7)(C) to enter his apartment. No other subject were located in the residence.

Several other (USC) possible juvenile gang members from 70P (Seven Oaks Park) MS-13 clique and SLC (Surenos Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.

(b)(6), (b)(7)(C) is a native and citizen of Mexico by birth. (b)(6), (b)(7)(C) states he last entered the United States on or about May 01, 2001, at or near Nogales, Arizona. (b)(6), (b)(7)(C) has no immigration documents allowing him to remain, reside, nor be employed in the U.S. lawfully.

(b)(6), (b)(7)(C) positively identified (b)(6), (b)(7)(C) with FBI (b)(6), (b)(7)(C) This shows a previous arrest for Shoplifting on October 11, 2008, by Omaha Police Department. No disposition is listed.

(b)(6), (b)(7)(C) was provided consulate, legal, and all other detention related information.

(b)(6), (b)(7)(C) is being processed for removal per 212(a)(6)(A)(i) - NTA/WA to Oakdale, Louisiana. Bond was set at \$5,000 per SDDO (b)(6), (b)(7)(C)

Signature

(b)(6), (b)(7)(C)

Title

SPECIAL AGENT

2 of 2 Pages

Family Name (CAFS)		First	Middle
(b)(6), (b)(7)(C)			
Country of Citizenship	Passport Number and Country of Issue	Case No.	File Number
MEXICO		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)
U.S. Address			
(b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217,			
Date, Place, Time, and Manner of Last Entry		Passenger Boarded at	
5/ /2002, Unknown Time, Etc			
Number, Street, City, Province (State) and Country of Permanent Residence			
Date of Birth	Age	Date of Action	Location Code
(b)(6), (b)(7)(C)	30	10/20/2010	NOL/NSV
City, Province (State) and Country of Birth		AR ☒	Form: (Type and No.) Lifted ☐ Not Lifted ☐
MEXICO			
NIV Issuing Post and NIV Number		Social Security Account Name	
Date Visa Issued		Social Security Number	
Immigration Record		Criminal Record	
NEGATIVE - See Narrative		None Known	
Name, Address, and Nationality of Spouse (Married Name, if Applicable)		Number and Nationality of Minor Children	
Father's Name, Nationality, and Address, if Known		Mother's Present and Maiden Names, Nationality, and Address, if Known	
(b)(6), (b)(7)(C) NATIONALITY: MEXICO		(b)(6), (b)(7)(C) NATIONALITY: MEXICO	
Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? ☒ Yes ☐ No	Systems Checks	Charge Code Word(s)
None Claimed			(b)(7)(C)
Name and Address of (Last) Current U.S. Employer	Type of Employment	Salary	Employed from/to
			10/ / /
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)			
FINS: (b)(6), (b)(7)(C), (b)(7)			
Left Index fingerprint		Right Index fingerprint	
(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C)	
Record of Deportable/Excludable Alien:			
On October 20, 2010, a joint enforcement operation was conducted at 1019 Patricia Ln (Claiborne Apts) by the Nashville, TN Fugitive Operations Team (FOT), Special Agents of Homeland Security Investigations, and the Nashville Metro Gang Unit. Numerous threats of violence were made towards management and leasing staff at these apartments. These threats allegedly originated from violent street gang members or affiliates. Investigation efforts... (CONTINUED ON I-831)			
Alien has been advised of communication privileges		(Date/Initials)	
		(b)(6), (b)(7)(C)	
Distribution:		Received: (Subject and Documents) (Report of Interview)	
		Officer: (b)(6), (b)(7)(C)	
		on: October 20, 2010 at 1900 (time)	
		Disposition: Warrant of Arrest/Notice to Appear	
		Examine Officer: (b)(6), (b)(7)(C)	

Form I-213 (Rev. 08/01/07)

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C) Event No: (b)(7)(e)	Date 10/20/2010
from all agencies participating in this operation resulted in targeting several specific apartments which were possibly associated with criminal and/or gang activity. This enforcement operation resulted in the arrest of twenty individuals that were determined to be illegally present in the United States with several of the individuals positively identified as known gang members and previously targeted ICE fugitives. One individual, (b)(6), (b)(7)(C) an ICE fugitive was located near (b)(6), (b)(7)(C) HSI Special Agent (b)(6), (b)(7)(C) located (b)(6), (b)(7)(C) in a back bedroom hiding in a closet. FOT officer arrived on scene and identified (b)(6), (b)(7)(C) as an ICE fugitive and placed (b)(6), (b)(7)(C) under arrest. (b)(6), (b)(7)(C) could not be positively identified as a gang member, but has several gang affiliations. (b)(7)(e) positively identified (b)(6), (b)(7)(C) with his immigration and criminal history with Alien Registration number (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) had no criminal history, but (b)(6), (b)(7)(C) has been linked or rumored to be involved in strong arm robbery of other immigrants. The outstanding order and Warrant of Removal/Deportation for (b)(6), (b)(7)(C) is being executed, and he will remain in ICE custody until removed from the U.S. to Mexico. Other: Several other (USC) possible juvenile gang members from 7OP (Seven Oaks Park) MS-13 clique and SLC (Sureños Locos Criminales) Sur 13 clique were interviewed and identified by Nashville Gang Unit and ICE officers.		
Signature (b)(6), (b)(7)(C)	Title Special Agent	

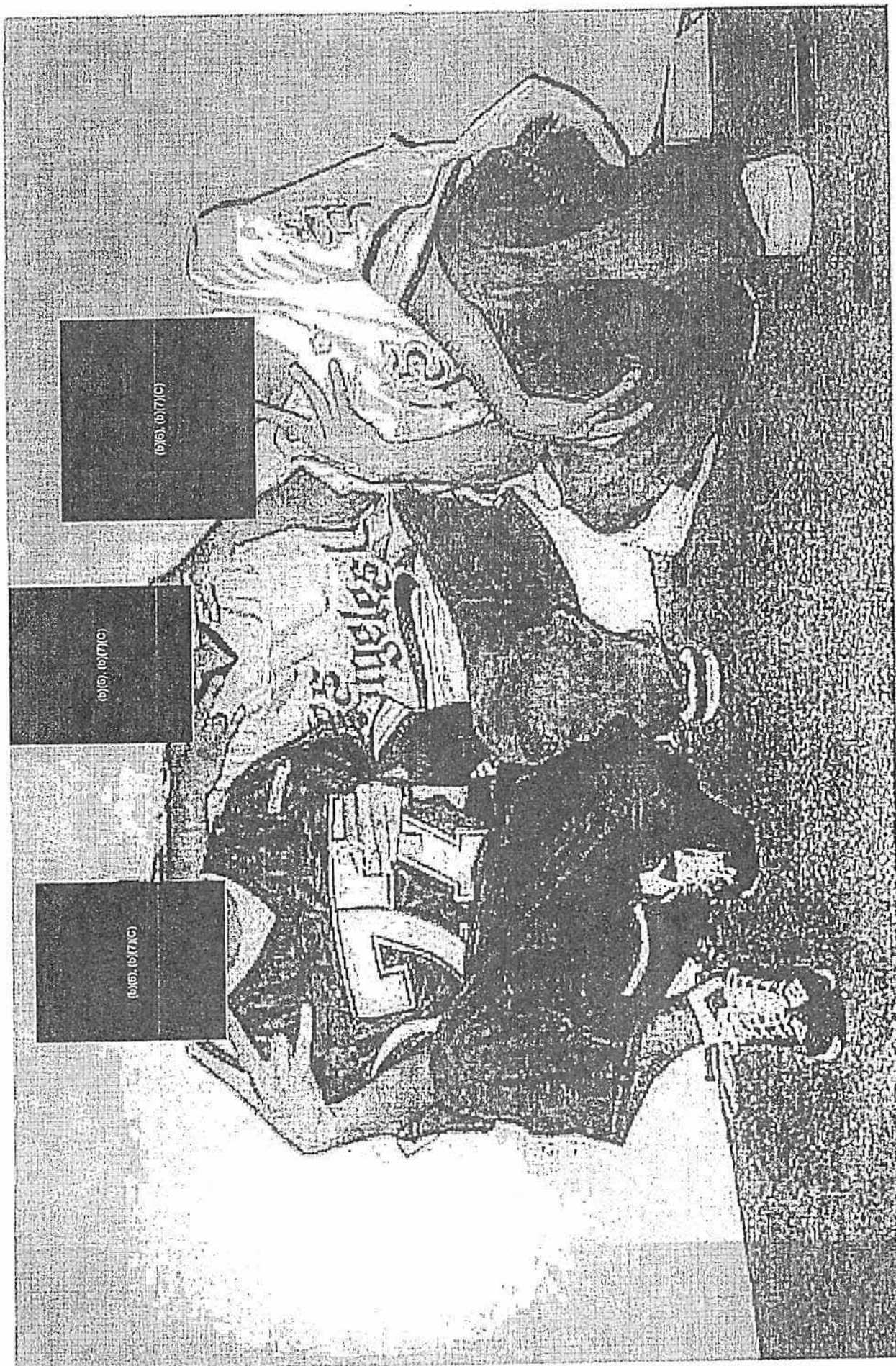
2 of 2 Pages

Family Name (CAPS) (b)(6), (b)(7)(C)		First (b)(6), (b)(7)(C)	Middle (b)(6), (b)(7)(C)	Sex M	Hair (b)(6), (b)(7)(C)	Eyes (b)(6), (b)(7)(C)	Complexion (b)(6), (b)(7)(C)
Country of Citizenship MEXICO	Passport Number and Country of Issue (b)(6), (b)(7)(C)	Case No. (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C)	Height (b)(6), (b)(7)(C)	Weight (b)(6), (b)(7)(C)	Occupation CONSTRUCTION	
U.S. Address (b)(6), (b)(7)(C) NASHVILLE, TENNESSEE, 37217,				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry Unknown Date, Unknown Time, UNK, EWI				FBI Number (b)(6), (b)(7)(C)			
Number, Street, City, Province (State) and Country of Permanent Residence				Single ☐ Divorced ☐ Married ☐ Widowed ☐ Separated ☐			
Date of Birth (b)(6), (b)(7)(C)		Age: 31	Date of Action 10/20/2010	Location Code NOL/NSV		Date/Time 10/20/2010 1800	
City, Province (State) and Country of Birth MEXICO		AR ☒	Form: (Type and No.) Lified ☐ Not Lified ☐				
NIV Issuing Post and NIV Number		Social Security Account Name		Status at Entry PWA Mexico			
Date Visa Issued		Social Security Number		Status When Found TRAVEL/SEEKING			
Immigration Record NEGATIVE - See Narrative				Criminal Record See Narrative			
Name, Address, and Nationality of Spouse (Maiden Name, if Applicable)				Number and Nationality of Minor Children NONE			
Father's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO				Mother's Name, Nationality, and Address, if Known (b)(6), (b)(7)(C) NATIONALITY: MEXICO			
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? ☒ Yes ☐ No		Systems Check See Narrative		Charge Code Word(s) (b)(7)(C)	
Name and Address of (Last/Current) U.S. Employer		Type of Employment		Salary 11r		Employed from/to	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
FINS: (b)(7)(e)		Left Index fingerprint			Right Index fingerprint		
							
Traffic - Other							
SCARS, MARKS, AND TATTOOS (b)(6), (b)(7)(C)							
... (CONTINUED ON I-831)							
Alien has been advised of communication privileges _____ (Date/Initials)				(b)(6), (b)(7)(C) Deportation Officer (Signature and Title of Immigration Officer)			
Distribution: CIS AGENT A-FILE				Received: (Subject and Documents) (Report of Interview) Officer: (b)(6), (b)(7)(C) on: October 20, 2010 at 2338 (time) Disposition: Notice to Appear Detained (I-862) Examining Officer: (b)(6), (b)(7)(C)			

Alien's Name (b)(6), (b)(7)(C)	File Number (b)(6), (b)(7)(C) Event No: (b)(7)(C)	Date 10/20/2010
ARRESTING AGENTS (b)(6), (b)(7)(C)		
RECORDS CHECKED (b)(7)(C)		
Signature (b)(6), (b)(7)(C)		
Title Deportation Officer		

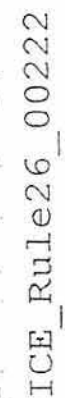
2 of 2 Pages

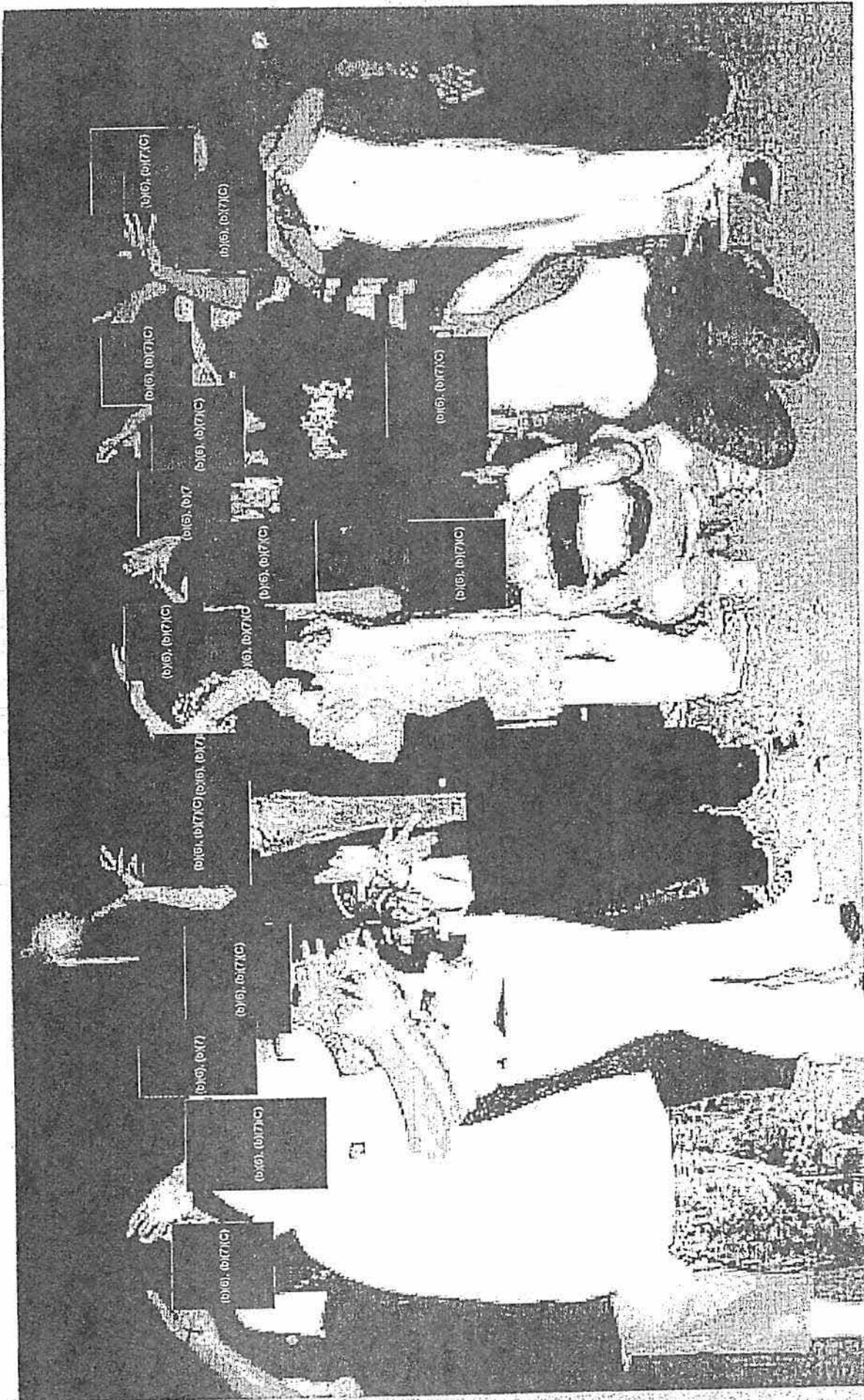












(b)(6), (b)(7)(C)

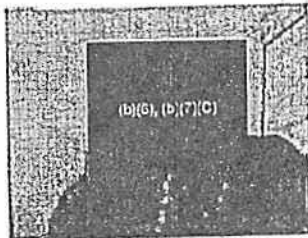
Male

19 years old

(b)(6), (b)(7)(C)

SURSIDE

Taiwan



Last Login:

10/19/2010

Mood: AGUITADO...

Contacting (b)(6), (b)(7)(C)

Send Message	Forward to Friend
Add to Friends	Add to Favorites
IM / Call	Block User
Add to Group	Rank User

(b)(6), (b)(7)(C)

COMPLAINT NUMBER: (b)(6), (b)(7)(C)

WARRANT NUMBER: (b)(6), (b)(7)(C)

PROSECUTOR: (b)(6), (b)(7)(C)

DEFENDANT: (b)(6), (b)(7)(C)

VICTIM:

STATE OF TENNESSEE, COUNTY OF DAVIDSON
AFFIDAVIT
FELONY DRUG OFFENSE
T.C.A. 39-17-417

Personally observed before me, the undersigned, [Select one] X Commissioner
Metropolitan General Sessions Judge, the prosecutor named above and made oath in
due form of law that [Select one] X he she [Select one] X personally observed
 has probable cause to believe that the defendant named above on 09/23/2005 in
Davidson County unlawfully and knowingly did [Select one] sell deliver
manufacture X possess with intent to sell, deliver, or manufacture a controlled substance
and that *the probable cause is as follows:*

(b)(6), (b)(7)(C)

Prosecutor: William Watson
1451 Elm Hill Pike
Nashville, Tennessee 37211
615 423- (b)(6)

Sworn to and subscribed before me on 09/24/2005 03:02:16 .

Steve Holzapfel
Judge of the Metropolitan General Sessions Court/CommissionerPage 1 of 1

(b)(6), (b)(7)(C)

A

24/7 Search and Technical Assistance 1-866-277-8407

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My Accurant People Business Assets Licenses Courts Phones Healthcare AV

Advanced Person Person People At Work Death Records More Searches

Last Name	First Name	Middle Name	SSN
☐ Include name variations ☒			
Street Address	City	State	Zip
(b)(6), (b)(7)(C)	NASHVILLE	TN	
County	Radius		
Phone	DOB	Age Range	
		-	
Reference: 1			

Coverage | Help?

Important: The Pul available data source Data is sometimes e Incorrectly and is ge More

Person Search Results
Search Terms Used - Street:

Records: 1 to 25 of 26

City: NASHVILLE; State: TN;

Result Page: 1 2

☒ Edit Search ☒ New Search ☒ Print Results ☒ Export to Excel

All	Full Name	SSN	Address	Phone	Next Steps
1.	(b)(6), (b)(7)(C)		(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237 Aug 99 - Oct 99		Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports:	Comprehensive Report		Other Reports		Relavint Report
					Address Report
					Learn how Accurant Reports can assist you: See Examples
2.	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (29)		(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237 May 06 - May 10		Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports:	Comprehensive Report		Other Reports		Relavint Report
					Address Report
					Learn how Accurant Reports can assist you: See Examples
3.	(b)(6), (b)(7)(C) Gender: Male Setup Alert		(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237 Jul 09 - Aug 10		Relatives Neighbors Associates

				Relatives, Neighbors & Associates
				People at Work
Reports: Comprehensive Report Other Reports Relay Report Finder Report Address Report				Learn how Accurant Reports can assist you: See Examples
4.	COPY	(b)(6), (b)(7)(C) Gender: Female *View Sources (-2) DOB: (b)(6), (b)(7)(C) (17)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1226 Nov 88 - Dec 91	Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports: Comprehensive Report Other Reports Relay Report Finder Report Address Report				Learn how Accurant Reports can assist you: See Examples
5.	COPY	(b)(6), (b)(7)(C) Gender: Female DOB: (b)(6), (b)(7)(C) (17)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1226 Jun 07 - Jun 10	Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports: Comprehensive Report Other Reports Relay Report Finder Report Address Report				Learn how Accurant Reports can assist you: See Examples
6.	COPY	(b)(6), (b)(7)(C) Gender: Male *View Sources (-4)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237 Mar 08 - Sep 10	Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports: Comprehensive Report Other Reports Relay Report Finder Report Address Report				Learn how Accurant Reports can assist you: See Examples
7.	COPY	(b)(6), (b)(7)(C) Gender: Female *View Sources (-1)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237 Apr 95 - Jan 97	Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports: Comprehensive Report Other Reports Relay Report Finder Report Address Report				Learn how Accurant Reports can assist you: See Examples
8.	COPY	(b)(6), (b)(7)(C) Gender: Female DOB: (b)(6), (b)(7)(C) (22) (-1) Setup Alert	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237 Feb 08 - Apr 09	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Reports: Comprehensive Report Other Reports Relay Report Finder Report Address Report				Learn how Accurant Reports can assist you: See Examples
9.		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives

<https://secure.accurint.com/app/bps/misc>

10/5/2010

All-Database Search Results:

TOP (0)

TWP (0)

1 of 1 potential match for "(b)(6), (b)(7)(C)"

(b)(6), (b)(7)(C)

1 of 1



*DL photos cannot be disseminated to the public or press without the express written consent of the Department of Safety.

Personal Information

License Type: Temporary - Temporary Identification (Expiring)

Non CDL Status: UNLICENSED

CDL Status: NONE

DL#: 104269095

Issued: 05/29/2009

Expires: 07/05/2010

Duplicates Issued: 0

Gender: F

Race: Hispanic

Height:

Weight:

Eye Color:

Hair Color:

D.O.B.:

SSN:

County: Davidson

Residence: (b)(6), (b)(7)(C)
APT K-9

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Nashville

CIMSIN
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX SYSTEM - DETAILED SEARCH DISPLAY

10/06/10
09:02:29

A#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C)

* DIGITIZED FILE - VIEW THE FILE IN IDDMP *

LAST: (b)(6), (b)(7)(C)
FIRST: (b)(6), (b)(7)(C)
MIDDLE: (b)(6), (b)(7)(C)
ALIASES:

NATZ DATE:
COURT:
LOCATION:

SEX: F POE: SYS COB: HONDU DOE: 05151991
FCO: DIG COA: EWI COC: FTC: 12202007 FATHER:
PFCO: NRC SFCO: DFO: 05261994 BIN: MOTHER:

SSN: (b)(6), (b)(7)(C)

CONSOLIDATED A-NOS

--OTHER INFORMATION--
EADS-X

I-94 ADM #:
PASSPORT #:
FBI #:
DRIVER LIC:
FINGER CD#:

(b)(7)(e)

10/06/10
09:02:38

A#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C)

ACTION	LOC	ACTION-DATE	ST	REASON/ COURT#	MISC	ID NUMBER/ MISC-DATE	KEYED-DATE
STATUS CHANGE	ZLA	05/15/1991		AO			02/12/1997
RAP APPL HIST	ZLA	05/26/1994		AO			05/26/1994
RAP FINAL HIST	ZLA	08/31/1994	C	EWI			08/31/1994
RAP FINAL HIST	ZLA	02/12/1997	C	EWI			02/12/1997
RAP FINAL HIST	ZLA	08/31/1999	C	EWI			08/31/1999

*** END OF HISTORY DISPLAY ***

(b)(7)(C)

CLAIMS/EAD MAINFRAME SYSTEM
EMPLOYMENT AUTHORIZATION DOCUMENT UPDATE/INQUIRY

10/06/2010

09:42

RCPT NBR: (b)(6), (b)(7)(C) A-NBR: A (b)(6), (b)(7)(C) REFERENCE NBR:
OWNED BY: EAC RECEIVED DATE: 05/19/2010
NAME: (b)(6), (b)(7)(C)
STREET: (b)(6), (b)(7)(C)
CITY: NASHVILLE STATE: TN ZIP: 37217 PHONE: 615-366- (b)(6)
CITZSHP: HONDU COB: HONDU DOB: (b)(6), (b)(7)(C) SEX: F
MAR STAT: S SSN NBR: (b)(6), (b)(7)(C) I94 NBR:
DATE ARR: 05181991 POE: MANNER LAST ENTRY: EWI CURRENT STATUS: UN
** TPS ** ABC MEMBER: N PHOTO ATTACHED (Y/N): Y
ELIGIBILITY: 274A.12(A)(12) PROV CODE: MULTIPLE (Y/N): N NONE (Y/N): N

(ENTER DATES AS MMDDCCYY) ISSUE CODE:
EMPLOYMENT START DATE: CARD ISSUE/DENIAL DATE:
EXPIRATION DATE: OFFICER ID: DENIAL CODE:
NAME ON CARD: SERIAL NBR:

(b)(7)(C)

(b)(7)e

CLAIMS MAINFRAME SYSTEM
CASE HISTORY

10/06/2010

09:43

PAGE: 1 OF 1

(b)(7)e

RECEIPT DATE: 05/21/2010

RECEIPT NUMBER: (b)(6), (b)(7)(C)

ACTION CODE

AALB RECEIVED AT THE LOCKBOX

IAA RECEIPT NOTICE SENT

MA70 BIOMETRICS RECEIVED FROM ASC

ACTION DATE

05202010

05202010

06292010

USER ID

EACLKBOX

EACLKBOX

EACBRU01

(b)(7)e

CLAIMS MAINFRAME SYSTEM
APPLICATION UPDATE PROCESSING

10/06/2010
09:43

MODE: L
FORM: I821 RCPT NBR: (b)(7)e APPEALED FORM:
PART 2: 2 PART 3: RECEIVED DT: 05/19/2010
A-NBR: A0 (b)(6), (b)(7)(C) REF NBR: ASSOC RCPT NBR:
NAME: (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)
C/O:
STREET: (b)(6), (b)(7)(C) CITY: NASHVILLE
STATE: TN PROVINCE: CNTRY: ZIP/POSTAL: 37217
GENDER: DOB: (b)(6), (b)(7)(C) COB: HONDU CNTRY OF CITZ: SOC SEC #: (b)(6), (b)(7)(C)
EMPLOYER: TAX ID:
REP CODE: REP TYPE: (A=ATTY, B=CERT.REP, C=OTHER)
NAME: CLASS:
FIRM: CITY:
STREET: STATE: PROVINCE: CNTRY: ZIP/POSTAL:
STATUS/ACTION: IAE FNGPRNT FEE RECEIPT SENT
INS STATUS: UN NEW CLASS:
PRIORITY DATE: DATE VALID FROM: 00000000 TO:
(b)(7)e

(b)(7)

PAGE: 1 OF 1

CLAIMS MAINFRAME SYSTEM
CASE HISTORY

10/06/2010

09:47

(b)(7)

RECEIPT DATE: 05/21/2010

RECEIPT NUMBER:

(b)(7)

ACTION CODE

AALB RECEIVED AT THE LOCKBOX

IAA RECEIPT NOTICE SENT

IAE FNGPRNT FEE RECEIPT SENT

ACTION DATE

05202010

05202010

05202010

USER ID

EACLKBOX

EACLKBOX

EACLKBOX

(b)(7)

10:02

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

PAGE 02 *****

***** TEXT OF MESSAGE *****

State Id Number (b)(6), (b)(7)(C) ()

Purpose Code C

Attention WORSHAM

The information in this rap sheet is subject to the following caveats:

THIS RECORD IS BASED ONLY ON THE SID OR FBI NUMBER IN YOUR REQUEST (

(b)(6), (b)(7)(C)) BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A

NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. USE OF THE

FOLLOWING RECORD IS REGULATED BY LAW. IT IS FURNISHED FOR OFFICIAL USE

ONLY AND SHOULD ONLY BE USED FOR THE PURPOSE REQUESTED. WHEN

EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY

WITH THE AGENCY THAT CONTRIBUTED THE FINGERPRINTS. (TBI; 2005-06-28)

***** IDENTIFICATION *****

Subject Name(s)

(b)(6), (b)(7)(C)

(AKA)

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

10:02

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)
(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 03 *****

Subject Description

FBI Number State Id Number

(b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)

Social Security Number

(b)(6), (b)(7)(C)

Sex Race

Female White

Height Weight

(b)(6), (b)(7)(C)

Hair Color Eye Color

(b)(6), (b)(7)(C)

Place of Birth

HD HD

Residence

MESSAGE IS DISPLAYED.

Skin Tone

Unknown

Date of Birth

(b)(6), (b)(7)(C)

(b)(7)(E)

(b)(7)(E)

10:02

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 04 *****
Residence as of 2007-09-10

(b)(6), (b)(7)(C)

NASHVILLE, TN

***** CRIMINAL HISTORY *****
===== Cycle 001 =====

Tracking Number

(b)(7)c

Earliest Event Date

2007-08-19

Incident Date

2007-08-19

Arrest Date

2007-08-19

Arrest Case Number

(b)(6), (b)(7)(C)

Arresting Agency

(b)(7)c

METROPOLITAN NASHVILLE PD

Subject's Name

(b)(6), (b)(7)(C)

Offender Id Number

(b)(6), (b)(7)(C)

Charge

1

Charge Number

(b)(6), (b)(7)(C)

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

10:02

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 05 *****

Charge Tracking Number (b)(7)e
Charge Literal CONTRIBUTING TO THE DELINQUENCY OF A MINOR
Counts 1
Severity UNKNOWN

Court Disposition (Cycle 001)
Court Case Number (b)(6), (b)(7)(C)
Court Agency METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal CONTRIB DELINQ MINOR
Charge Description MISDEMEANOR
Counts 1

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

10:02

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 06 *****

Severity MISDEMEANOR
Disposition GUILTY PLEA - AS CHARGED(2007-09-10;
DISPOSITION GUILTY FINE \$50.00 COST \$193.00
SUSPENDED=N)

***** INDEX OF AGENCIES *****

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

* * * END OF RECORD * * *

MESSAGE IS DISPLAYED.

(b)(7)c

END OF THIS MESSAGE

(b)(7)c

Record Check Search Criteria: (b)(6), (b)(7)(C) -- D.O.B. (b)(6), (b)(7)(C)
Nashville, Davidson County, Tennessee - Criminal Court Clerk

Date of Report: 06-OCT-10

CJIS DATA

Case Details:

Name: (b)(6), (b)(7)(C) Date of Birth: (b)(6), (b)(7)(C)
Disposition: Guilty Disposition Date: 10-SEP-07 Case Status: CLOSED
Case Type: GS Case Number: (b)(6), (b)(7)(C) Citation/Arrest Date: 10-SEP-07 Convicted Type (F/M): MISD
Charged Offense: Contr. Del. of Minor Convicted Offense: Contr. Del. of Minor
Concurrent with: Consecutive to:

Appearance Details:

Date: 10-SEP-07 Judge: Holt, Aaron Court Room: Birch Bldg, Court Room 1A
Attorney: Se, Pro Reason: Settlement

Incarceration:

Location: Years: Months: Days: Hours: Percentage: Report Date:
Suspend All But: SAB%: Day for Day?:N Hour for Hour?:N
Suspend?:N No Work Default?:N Work Release?:N Work Release %: No Early Release?:N
Time Served Credit: Months: Days: Hours:
Incarceration Special Condition:

Court Costs:

Court Costs: \$.00 Court Fines: \$50.00 Total Owed: \$.00
Fines Special Condition:

Probation:

Type: Years: Months: Days:
Probation Special Condition:

Restitution:

\$.00
Notes:

All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All"

(b)(6), (b)(7)(C)

1 of 1

Photo Not
Available

*DL photos cannot be disseminated to the public or press without the express written consent of the Department of Safety.

Personal Information

License Type: History Only
Non CDL Status: SUSPENDED
CDL Status: NONE
DL#: (b)(6), (b)(7)(C)
Issued: No Data Available
Expires:
Duplicates Issued: 0

Gender: F
Race: Unknown
Height: 0' 0"
Weight: 000 LB
Eye Color:
Hair Color:
D.O.B.: (b)(6), (b)(7)(C)
SSN: 000-00-0000

County: Not Provided

Residence: (b)(6), (b)(7)(C)
NASHVILLE, TN 37217
Last Updated: Not Available

All-Database Search Results:

TOP (0)

TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All"

(b)(6), (b)(7)(C)

Photo not available

 Print MVR Report

Reinstatement Eligibility Date for Non-CDL: Indefinite

Reinstatement Eligibility Date for CDL: Indefinite

Former State/Lic No: / ** UNKNOWN **

1 - 3 of 3						
<u>Event Date</u>	<u>Action Date</u>	<u>Action Code</u>	<u>Location</u>	<u>Date Rec'd</u>	<u>MPH/Speed Zone</u>	<u>Case Number</u>
07/19/2007	07/30/2007	013	DAVIDSON	07/10/2008	000/000	(b)(6), (b)(7)(C)
NO DRI LIC; WRONG LIC FOR TYPE VEHICLE						
04/11/2009	09/14/2009	050	DAVIDSON	09/28/2009	000/000	
FAIL TO SATISFY CITATION/SUSP/NOTICE SENT						
05/27/2009	06/17/2009	013	DAVIDSON	10/19/2009	000/000	(b)(6), (b)(7)(C)
NO DRI LIC; WRONG LIC FOR TYPE VEHICLE						

For added privacy, log off and close your browser window when you are finished using this service.
This page accessed 10.6.2010 11:28AM
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Important: The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

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Your DPPA Permissible Use: Court, Law Enforcement, or Government Agencies
Your GLBA Permissible Use: Law Enforcement Purposes

Law Enforcement Report

Date: 10/06/10
Reference Code: 1

Report processed by:
DHS ICE DRO Fugitive Operations Support Center
500 12 Street SW
Washington, DC 20236
202-282-8000 Main Phone

Report Legend:

- S - Shared Address
- D - Deceased
- ✓ - Probable Current Address

Subject Information: (Best Information for Subject)

Name: (b)(6), (b)(7)(C)
SSN:
Age:

Others Associated With Subjects SSN:
(DOES NOT usually indicate any type of fraud or deception)
[None Found]

Address Summary: View All Address Variation Sources

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY (Mar 2008 - Sep 2010)
(b)(6), (b)(7)(C) NASHVILLE TN 37208-3702, DAVIDSON COUNTY (Jun 2009)

Previous And Non-Verified Address(es): View All Address Variation Sources
(b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY (Mar 2008 - Sep 2010)

Name Associated with Address:

(b)(6), (b)(7)(C)
Property Ownership Information for this Address
Property:

Parcel Number -
Name Owner : TRITEX R & E ADVISORS INC
Property Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226, DAVIDSON
COUNTY
Owner Address: (b)(6), (b)(7)(C) ATLANTA GA 30326-
1156, FULTON COUNTY

Name of Seller : FBT OF TENNESSEE INC
Data Source - A
Neighborhood Profile (2000 Census)

Average Age: 32
Median Household Income: \$28,942
Median Owner Occupied Home Value: \$77,100
Average Years of Education: 11
(b)(6), (b)(7)(C) NASHVILLE TN 37208-3702, DAVIDSON COUNTY (Jun 2009)

10/6/2010

Name Associated with Address:

Property Ownership Information for this Address
Property:

Parcel Number: (b)(6), (b)(7)(C)

Book: (b)(6), (b)(7)(C)

Page: (b)(6), (b)(7)(C)

Name Owner: EPANDCO HOLDINGS, LLC

Property Address: (b)(6), (b)(7)(C) NASHVILLE TN 37208-1300, DAVIDSON

COUNTY

Owner Address: (b)(6), (b)(7)(C) ARZANA CA 91356-3925, LOS ANGELES

COUNTY

Sale Price - \$1,100,000

Land Usage - APARTMENTS (GENERIC)

Total Market Value - \$1,774,700

Assessed Value - \$709,880

Land Value - \$432,000

Improvement Value - \$1,342,700

Year Built - 1974

Data Source - B

Neighborhood Profile (2000 Census)

Average Age: 40

Median Household Income: \$19,741

Median Owner Occupied Home Value: \$69,400

Average Years of Education: 12

 Phones Plus(s):
[None Found] Possible Criminal Records:
[None Found] Sexual Offenses:
[None Found] Driver's License Information:
[None Found] Motor Vehicles Registered To Subject:

Vehicle:

Description: (b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 6 Cylinder 256 Cubic Inch

Anti Lock Brakes: 4 wheel standard

Air Conditioning: Optional

Daytime Running Lights: Unknown

Power Steering: Standard

Power Brakes: Standard

Power Windows: Standard

Security System: Anti-theft device

Roof: None / not available

Price: 30270

Radio: AM/FM CD

Front Wheel Drive: No

Four Wheel Drive: No

Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY

Sex: Male

Tag Number: (b)(6), (b)(7)(C)

Earliest Registration Date: 10/20/2008

Latest Registration Date: 10/20/2008

10/6/2010

(b)(7)e

Expiration Date: 10/31/2009
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 256 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Optional
Daytime Running Lights: Unknown
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Anti-theft device
Roof: None / not available
Price: 30270
Radio: AM/FM CD
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY
Sex: Male
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 10/20/2008

Lien Holder(s)

Record Type: HISTORICAL
Company Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37211-5205, DAVIDSON COUNTY

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 206 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Optional
Security System: Unknown
Roof: None / not available
Price: 26468
Radio: AM/FM Cassette
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY
Sex: Male
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 3/26/2008
Latest Registration Date: 3/26/2008
Expiration Date: 3/31/2009
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)

10/6/2010

ICE 2014-FOIA-01578 000350
ICE_Rule26_00245

State Of Origin: TENNESSEE
Engine: 6 Cylinder 206 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Optional
Security System: Unknown
Roof: None / not available
Price: 26468
Radio: AM/FM Cassette
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY
Sex: Male
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 3/26/2008

Lien Holder(s)

Record Type: HISTORICAL
Company Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37211-5205, DAVIDSON COUNTY

 **Florida Accidents:**
[None Found]

 **Concealed Weapons Permit:**
[None Found]

 **People at Work:**
[None Found]

 **Professional License(s):**
[None Found]

 **FAA Certifications:**
[None Found]

 **FAA Aircrafts:**
[None Found]

 **Watercraft:**
[None Found]

 **Voter Registration:**
[None Found]

 **Hunting/Fishing Permit:**
[None Found]

 **Liens and Judgments:**
[None Found]

UCC Filings:
[None Found]**Possible Properties Owned by Subject:**
[None Found]**Possible Associates:**
[None Found]**Possible Relative Summary:** (Click on name to link to more details within this report - No Charge)

> (b)(6), (b)(7)(C) Age 22
>> (b)(6), (b)(7)(C) Age 22
>> (b)(6), (b)(7)(C) Age 22
>> (b)(6), (b)(7)(C) (AKA), Age 22
>> (b)(6), (b)(7)(C) - (AKA), Age 22
>> (b)(6), (b)(7)(C) (AKA), Age 22
>> (b)(6), (b)(7)(C) Age 70
>>> (b)(6), (b)(7)(C), Age 70
>>> (b)(6), (b)(7)(C) (AKA), Age 70
>>> (b)(6), (b)(7)(C) (AKA), Age 70
>>> (b)(6), (b)(7)(C) (AKA), Age 70
>>> (b)(6), (b)(7)(C) - (AKA), Age 70
>>> (b)(6), (b)(7)(C) Age 44
>>> (b)(6), (b)(7)(C) (AKA), Age 44
>>> (b)(6), (b)(7)(C) (AKA), Age 44
>>> (b)(6), (b)(7)(C) - (AKA), Age 44
>>> (b)(6), (b)(7)(C) Age 71
>>> (b)(6), (b)(7)(C) Age 39
>>> (b)(6), (b)(7)(C) (AKA), Age 39
>>> (b)(6), (b)(7)(C) - (AKA), Age 39
>>> (b)(6), (b)(7)(C) Age 36
>>> (b)(6), (b)(7)(C) - (AKA), Age 36
>>> (b)(6), (b)(7)(C) Age 36
>>> (b)(6), (b)(7)(C) Age 36
>>> (b)(6), (b)(7)(C) Age 59
>>> (b)(6), (b)(7)(C) (AKA), Age 59
>>> (b)(6), (b)(7)(C) (AKA), Age 59
>>> (b)(6), (b)(7)(C) (AKA), Age 59
>>> (b)(6), (b)(7)(C)
>> (b)(6), (b)(7)(C)

Possible Relatives:

(b)(6), (b)(7)(C) Age: 22
(b)(6), (b)(7)(C) Issued in Arkansas between 1/1/1988 and 12/31/1989
Names Associated with Relative:
(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 22
(b)(6), (b)(7)(C) Issued in Arkansas between 1/1/1988 and 12/31/1989
(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 22
(b)(6), (b)(7)(C) Issued in Arkansas between 1/1/1988 and 12/31/1989
(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 22
(b)(6), (b)(7)(C) Issued in Arkansas between 1/1/1988 and 12/31/1989
(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 22
(b)(6), (b)(7)(C) Issued in Arkansas between 1/1/1988 and 12/31/1989
VANITA G ROSE PITONIS DOB: 8/24/1988 Age: 22

(b)(7)(e)

10/6/2010

ICE 2014-FOIA-01578,000352
ICE_Rule26_00247

(b)(6), (b)(7)(C) issued in Arkansas between 1/1/1988 and 12/31/1989
Previous And Non-Verified Address(es):
(b)(6), (b)(7)(C) NASHVILLE TN 37209-4024, DAVIDSON COUNTY (Sep 2009 - Aug 2010)

Current Residents at Address:

(b)(6), (b)(7)(C) PANAMA CITY FL 32405-1302, BAY COUNTY (Dec 2005 - Aug 2010)

Current Residents at Address:

(b)(6), (b)(7)(C)
850-319- (b)(6)

(b)(6), (b)(7)(C) NASHVILLE TN 37208-1300, DAVIDSON COUNTY (Sep 2009)
S (b)(6), (b)(7)(C) NASHVILLE TN 37217-1237, DAVIDSON COUNTY (Jan 2008 - Apr 2009)
(b)(6), (b)(7)(C) NASHVILLE TN 37208-1383, DAVIDSON COUNTY (Mar 2009)
S (b)(6), (b)(7)(C) NASHVILLE TN 37208-3702, DAVIDSON COUNTY (Jul 2008)
(b)(6), (b)(7)(C) GUY AR 72061, FAULKNER COUNTY (Apr 2004 - Mar 2007)
(b)(6), (b)(7)(C) PANAMA CITY FL 32409-2212, BAY COUNTY (Apr 2005 - May 2006)

Current Residents at Address:

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) GUY AR 72061, FAULKNER COUNTY (Apr 2005 - Oct 2005)

Possible Relative:

D (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) DOD: 8/11/2004 (FAULKNER, AR) Age at Death: 64 (Born 70 years ago) - Verified

(b)(6), (b)(7)(C) issued in Arkansas between 1/1/1955 and 12/31/1956

Names Associated with Relative:

D (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) DOD: 8/11/2004 (FAULKNER, AR) Age at Death: 64 (Born 70 years ago) - Verified

(b)(6), (b)(7)(C) issued in Arkansas between 1/1/1955 and 12/31/1956

D (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) DOD: 8/11/2004 (FAULKNER, AR) Age at Death: 64 (Born 70 years ago) - Verified

(b)(6), (b)(7)(C) issued in Mississippi between 1/1/1955 and 12/31/1955

D (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) DOD: 8/11/2004 (FAULKNER, AR) Age at Death: 64 (Born 70 years ago) - Verified

(b)(6), (b)(7)(C) issued in Arkansas between 1/1/1955 and 12/31/1956

D (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) DOD: 8/11/2004 (FAULKNER, AR) Age at Death: 64 (Born 70 years ago) - Verified

(b)(6), (b)(7)(C) issued in Arkansas between 1/1/1955 and 12/31/1956

D (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) DOD: 8/11/2004 (FAULKNER, AR) Age at Death: 64 (Born 70 years ago) - Verified

(b)(6), (b)(7)(C) issued in Arkansas between 1/1/1955 and 12/31/1956

Previous And Non-Verified Address(es):

(b)(6), (b)(7)(C) GUY AR 72061-0182, FAULKNER COUNTY (Feb 2001 - Aug 2010)

Current Residents at Address:

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) PANAMA CITY FL 32409-2212, BAY COUNTY (Mar 2004 - Nov 2007)

Current Residents at Address:

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) CONWAY AR 72034-6729, FAULKNER COUNTY (Jul 2005)
(b)(6), (b)(7)(C) GREENBRIER AR 72058-9701, FAULKNER COUNTY (Apr 2003 - Mar 2005)

Current Residents at Address:

(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) LITTLE ROCK AR 72200-2768, DALLAS COUNTY (Jul 2004)

10/6/2010

ICE 2014-FOIA-01578.000353
ICE Rule26_00248

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

This rap sheet was produced in response to the following request:

FBI Number (b)(6), (b)(7)(C), (b)(7)e
State Id Number (b)(6), (b)(7)(C)
Purpose Code C
Attention (b)(6), (b)(7)(C)

The information in this rap sheet is subject to the following caveats:

THIS RECORD IS BASED ONLY ON THE SID OR FBI NUMBER IN YOUR REQUEST ((b)(6), (b)(7)(C)) BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. USE OF THE FOLLOWING RECORD IS REGULATED BY LAW. IT IS FURNISHED FOR OFFICIAL USE ONLY AND SHOULD ONLY BE USED FOR THE PURPOSE REQUESTED. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT CONTRIBUTED THE FINGERPRINTS. (TBI; 2005-06-28)

***** IDENTIFICATION *****

Subject Name(s)

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)a

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(e)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

PAGE 03 *****

***** TEXT OF MESSAGE *****

(b)(6), (b)(7)(C)

(AKA)

(b)(6), (b)(7)(C)

(AKA)

Subject Description

FBI Number

State Id Number

(b)(6), (b)(7)(C), (b)(7)(D)

(b)(6), (b)(7)(C)

Sex

Race

Skin Tone

Male

White

Unknown

Height

Weight

Date of Birth

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

MESSAGE IS DISPLAYED.

(b)(7)(e)

(b)(7)(e)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 04 *****

Hair Color Eye Color

(b)(6), (b)(7)(C)

Place of Birth

MM MM MM MM

Residence

Residence as of 2004-09-22

(b)(6), (b)(7)(C)

NASHVILLE, TN

Residence as of

2007-03-29

(b)(6), (b)(7)(C)

NASHVILLE, TN

Residence as of

2007-06-19

(b)(6), (b)(7)(C)

NASHVILLE, TN

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 05 *****

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Tracking Number (b)(7)e
Earliest Event Date 2004-09-21 Incident Date 2004-09-21

Arrest Date 2004-09-21
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)e METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal DRIVING UNDER THE INFLUENCE
Counts 1

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 06 *****

Severity UNKNOWN
Charge 2
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal IMPLIED CONSENT VIOLATION
Counts 1
Severity UNKNOWN
Charge 3
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal LICENSE, DRIVERS LICENSE REQUIRED
Counts 1
Severity UNKNOWN

Court Disposition (Cycle 001)
MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(c)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 07 *****

Court Case Number (b)(6), (b)(7)(C)
Court Agency (b)(7)(c) METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal LIC, DRIVER LIC REQ
Charge Description MISDEMEANOR
Counts 1
Severity MISDEMEANOR
Disposition DISMISSED (; DISPOSITION DISMISSED)

Court Disposition (Cycle 001)
Court Case Number (b)(6), (b)(7)(C)
Court Agency (b)(7)(c) METROPOLITAN NASHVILLE PD
MESSAGE IS DISPLAYED. (b)(7)(c)

(b)(7)(c)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)g

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 08 *****

Subject's Name

(b)(6), (b)(7)(C)

Charge

2

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal

DRIVING, RECKLESS

Charge Description

MISDEMEANOR

Counts

2

Severity

MISDEMEANOR

Disposition

GUILTY PLEA - LESSER CHARGE(2004-10-25;
DISPOSITION GUILTY PLEA - LESSOR CHARGE
RECEIVED 6 MONTHS FINE \$250.00 COST \$377.00)

==== Cycle 002 =====

Tracking Number

(b)(7)g

Earliest Event Date

2005-08-12 Incident Date

2005-08-12

MESSAGE IS DISPLAYED.

(b)(7)g

(b)(7)g

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 09 *****

Arrest Date 2005-08-12
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)C METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal PUBLIC INTOXICATION
Counts 1
Severity UNKNOWN

===== Cycle 003 =====

Tracking Number (b)(7)C
Earliest Event Date 2005-08-24 Incident Date 2005-08-24

MESSAGE IS DISPLAYED.

(b)(7)C

(b)(7)C

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)
(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 10 *****

Arrest Date 2005-08-24
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)e METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal PUBLIC INTOXICATION
Counts 1
Severity UNKNOWN

===== Cycle 004 =====
Tracking Number (b)(7)e
Earliest Event Date 2006-01-17 Incident Date 2006-01-17

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)C

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 11 *****

Arrest Date 2006-01-17
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)C METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal DRIVING UNDER THE INFLUENCE
Counts 1
Severity UNKNOWN
Charge 2
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal IMPLIED CONSENT VIOLATION
MESSAGE IS DISPLAYED. (b)(7)C

(b)(7)C

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(e)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

PAGE 12 *****

***** TEXT OF MESSAGE *****

Counts 1
Severity UNKNOWN
Charge 3
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal LICENSE, DRIVERS LICENSE REQUIRED
Counts 1
Severity UNKNOWN

===== Cycle 005 =====

Tracking Number (b)(7)(e)
Earliest Event Date 2006-02-19 Incident Date 2006-02-19

Arrest Date 2006-02-19
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)(e) METROPOLITAN NASHVILLE PD
MESSAGE IS DISPLAYED. (b)(7)(e)

(b)(7)(e)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 13 *****

Subject's Name (b)(6) (b)(7)(C)
Offender Id Number (b)(6) (b)(7)(C)
Charge 1
Charge Number (b)(6) (b)(7)(C)
Charge Tracking Number
Charge Literal FAIL TO BE BOOKED (STATE CITATION)
Counts 1
Severity UNKNOWN
Charge 2
Charge Number (b)(6) (b)(7)(C)
Charge Tracking Number
Charge Literal LICENSE, DRIVING ON SUSPENDED LICENSE
Counts 1
Severity UNKNOWN

MESSAGE IS DISPLAYED.

(b)(7)

(b)(7)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

PAGE 14 *****

***** TEXT OF MESSAGE *****

Court Disposition (Cycle 005)

Court Case Number (b)(6), (b)(7)(C)

Court Agency METROPOLITAN NASHVILLE PD

Subject's Name (b)(6), (b)(7)(C)

Charge 1

Charge Number (b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal LIC, DR SUS LICENSE

Charge Description MISDEMEANOR

Counts 1

Severity MISDEMEANOR

Disposition GUILTY PLEA - AS CHARGED(; DISPOSITION GUILTY)

===== Cycle 006 =====

Tracking Number (b)(7)E

Earliest Event Date 2007-03-28 Incident Date 2007-03-28

MESSAGE IS DISPLAYED.

(b)(7)D

(b)(7)D

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(c)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 15 *****

Arrest Date 2007-03-28
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(6), (b)(7)(C) METROPOLITAN NASHVILLE PD
Subject's Name JACINTO ABELARDO CARDENAS
Offender Id Number (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal CAPIAS FOR CAPIAS FELONY (GS)
Counts 1
Severity UNKNOWN
Charge 2
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
MESSAGE IS DISPLAYED. (b)(7)(c)

(b)(7)(c)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

PAGE 16 *****

***** TEXT OF MESSAGE *****

Charge Literal CAPIAS FOR CAPIAS MISD (GS)
Counts 1
Severity UNKNOWN

Charge

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal CAPIAS FOR CAPIAS MISD (GS)

Counts 1

Severity UNKNOWN

Charge

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal PUBLIC INDECENCY

Counts 1

Severity UNKNOWN

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 17 *****

Charge 5
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal IMPERSONATION, CRIMINAL
Counts 1
Severity UNKNOWN
Charge 6
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal EVADING ARREST, MISDEMEANOR
Counts 1
Severity UNKNOWN

Court Disposition (Cycle 006)
Court Case Number (b)(6), (b)(7)(C)
MESSAGE IS DISPLAYED. (b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 18 *****

Court Agency (b)(7)e METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal PUBLIC INDECENCY
Charge Description MISDEMEANOR
Counts 1
Severity MISDEMEANOR
Disposition GUILTY PLEA - AS CHARGED(2007-03-29;
DISPOSITION GUILTY RECEIVED 8 DAYS COST \$193.00
SUSPENDED=N)

Court Disposition (Cycle 006)

Court Case Number (b)(6), (b)(7)(C)

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 19 *****

Court Agency

(b)(7)e

METROPOLITAN NASHVILLE PD

Subject's Name

(b)(6), (b)(7)(C)

Charge

2

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal

EVADING ARREST MIS

Charge Description

MISDEMEANOR

Counts

2

Severity

MISDEMEANOR

Disposition

GUILTY PLEA - AS CHARGED(2007-03-29;
DISPOSITION GUILTY RECEIVED 8 DAYS COST \$193.00
SUSPENDED=N)

Court Disposition

(Cycle 006)

Court Case Number

(b)(6), (b)(7)(C)

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 20 *****

Court Agency (b)(7)e METROPOLITAN NASHVILLE PD

Subject's Name (b)(6), (b)(7)(C)

Charge 3

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal IMPERS, CRIM

Charge Description MISDEMEANOR

Counts 3

Severity MISDEMEANOR

Disposition GUILTY PLEA - AS CHARGED(2007-03-29;

DISPOSITION GUILTY RECEIVED 8 DAYS COST \$193.00

SUSPENDED=N)

===== Cycle 007 =====

Tracking Number (b)(7)e

Earliest Event Date 2007-06-19 Incident Date 2007-06-19

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 21 *****

Arrest Date 2007-06-19

Arrest Case Number (b)(6), (b)(7)(C)

Arresting Agency (b)(7)(E) METROPOLITAN NASHVILLE PD

Subject's Name (b)(6), (b)(7)(C)

Offender Id

** MESSAGE EXCEEDED 14400 CHARACTERS-HAS BEEN SEGMENTED BY (b)(7)(E) *

** PART 1 OF 2 **

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM NLETS ON 10/06/10 AT 12:00:28

CR (b)(7)e

09:00 10/06/2010 61635

09:00 10/06/2010 09768 (b)(7)e

(b)(7)e

TXT

HDR (b)(7)e

ATTN (b)(6), (b)(7)(C)

Number (b)(6), (b)(7)(C)

Charge

1

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal

LICENSE, DRIVERS LICENSE REQUIRED

Counts

1

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(u)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

Severity UNKNOWN

Charge

2

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

Charge Literal

IMPERSONATION, CRIMINAL

Counts

1

Severity

UNKNOWN

Court Disposition

(Cycle 007)

Court Case Number

(b)(6), (b)(7)(C)

Court Agency

(b)(7)(u)

METROPOLITAN NASHVILLE PD

Subject's Name

(b)(6), (b)(7)(C)

Charge

1

Charge Number

(b)(6), (b)(7)(C)

Charge Tracking Number

MESSAGE IS DISPLAYED.

(b)(7)(u)

(b)(7)(u)

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 03 *****

Charge Literal IMPERS, CRIM
Charge Description MISDEMEANOR
Counts 1
Severity MISDEMEANOR
Disposition GUILTY PLEA - AS CHARGED(2007-06-25;
DISPOSITION GUILTY RECEIVED 45 DAYS COST
\$193.00 SUSPENDED=N)

Court Disposition (Cycle 007)
Court Case Number (b)(6), (b)(7)(C)
Court Agency (b)(7)a METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Charge 2
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
MESSAGE IS DISPLAYED. (b)(7)e

(b)(7)a

12:01

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

PAGE 04 *****

***** TEXT OF MESSAGE *****

Charge Literal LIC, DRIVER LIC REQ

Charge Description MISDEMEANOR

Counts 2

Severity MISDEMEANOR

Disposition DISMISSED(2007-06-25; DISPOSITION DISMISSED
SUSPENDED=N)

***** INDEX OF AGENCIES *****

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

All-Database Search Results:

TOP (0)

TWP (1)

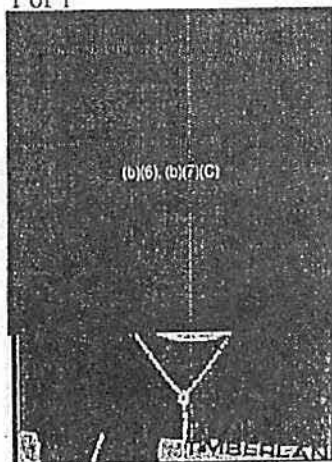
1 of 1 potential match for

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

1 of 1



Personal Information

License Type: Class D Only

Non CDL Status: SUSPENDED

CDL Status: NONE

DL#: (b)(6), (b)(7)(C)

Issued: 08/23/2006

Expires: 04/29/2008

Duplicates Issued: 1

Gender: F

Race: Hispanic

Height:

Weight:

Eye Color:

Hair Color:

D.O.B.:

SSN:

(b)(6), (b)(7)(C)

County: Davidson

Residence:

(b)(6), (b)(7)(C)

NASHVILLE, TN 37217

Last Updated: 01/27/2004

Local
warrantsICE
Fugitive

(b)(6), (b)(7)(C)

*DL photos cannot be disseminated to the public or press without the express written consent of the Department of Safety.

Mailing: Not Available

Last Updated: Not Available

Access to Driver License inquiries is governed by the Federal Driver's Privacy Protection Act of 2000 (DPPA).

Deconfliction☐ Flag this Record**Handguns****No Handgun Permit****Restrictions****None****Endorsements****None**

For added privacy, log off and close your browser window when you are finished using this service.
This page accessed 10.15.2010 11:37AM
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CIMIDN
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX/STEM - ID # SEARCH/DISPLAY

10/15/10
12:42:11

ID # (A/AA/AB/C/DA): (S)(L)(Q) (S)(Q)
(LE/FB/FP/I/PP/SS/ID)
LAST:
FIRST: (S)(L)(Q) (S)(Q)
MIDDLE:
ALIASES:

A#: (S)(L)(Q) (S)(Q)

DOB: (S)(L)(Q) (S)(Q)

NATZ DATE:
COURT:
LOCATION:

SEX: F POE: COB: GUATE DOE: 11231993
FCO: HAR COA: EWI COC: GUATE FTI: 03062000 FATHER:
PFCO: NYC SFCO: DFO: 11291993 BIN: MOTHER:

SSN:
I-94 ADM #:
PASSPORT #:
FBI #: (S)(L)(Q) (S)(L)(Q) (S)(Q)
DRIVER LIC:
FINGER CD#:

CONSOLIDATED A-NOS

--OTHER INFORMATION--
EARM-X NAIL-X

(S)(L)(Q)

CIMEOIR1

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX STEM - EOIR DATA DISPLAY

10/15/10
12:42:19

A NUMBER: (b)(6), (b)(7)(C)

BASE CITY: NYC HEARING LOC: NYC

A-NUMBER:

(b)(6), (b)(7)(C)

CIS NAME:

PRIN A-NUMBER:

EOIR NAME:

EOIR NATIONALITY: GT

DOB:

CASE TYPE: DEP

RELATION:

CHARGE DOC: 11/25/1993 ASYLUM TYPE:

CUSTODY: REL

CLK ELAPSE: 0

PROCEED REC: 02/11/1994 INIT HEARING: 05/06/1994

CLK UPDTD:

LAST HEARING: 05/06/1994 TYPE: MSTR

CLK ST:

INIT RECD:

ASYL RECD:

IJ DECISN:

IJ COMPLETE: 05/06/1994

APPLICATIONS

W/H DECISN:

EOIR DECISN: DEPORT

FILED DEC

OTHER COMPL:

212C:

MTR RECD:

DECISN:

DATE:

245ADJ:

APPEAL:

DECISN:

DATE:

VOL DEP:

FINAL DISP: ADM FRO DATE: 05/06/1994

WITHDRWL:

SUSPENS:

CHARGES: (1) 241a01B
(4)

(2)
(5)

(3)
(6)

(b)(7)e

12:39

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(c)

QUEUE TYPE: PERSONAL

QUEUE NAME: RKWT
MSG STATUS: NACK

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(c) ON 10/15/10 AT 12:39:14

THIS (b)(7)(c) RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM (b)(7)(c) SEX/F RAC/W DOB/ (b)(7)(c) PUR/C
NAME FBI NO. INQUIRY DATE
(b)(7)(c) (b)(7)(c) 2010/10/15

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
F W (b)(7)(c) N

BIRTH PLACE
GUATEMALA

FINGERPRINT CLASS PATTERN CLASS
MESSAGE IS DISPLAYED. (b)(7)(c)

FIRST PAGE OF MESSAGE
(b)(7)(c)

12:39

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(D)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

PAGE 02

***** TEXT OF MESSAGE *****

(b)(7)(D) (b)(7)(D) (b)(7)(D)

ALIAS NAMES

(b)(7)(D) (b)(7)(D)

OTHER

BIRTH DATES SOCIAL SECURITY

(b)(7)(D) (b)(7)(D)

IDENTIFICATION DATA UPDATED 2007/12/08

MESSAGE IS DISPLAYED.

(b)(7)(D)

(b)(7)(D)

12:39

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

TENNESSEE
FBI

- STATE ID: (b)(7)(E)
- FBI: (b)(7)(E)

THE RECORD(S) CAN BE OBTAINED THROUGH THE (b)(7)(E)
(b)(7)(E) BY USING THE APPROPRIATE (b)(7)(E) TRANSACTION.

END

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

PAGE 01

***** TEXT OF MESSAGE *****
FROM (b)(7)(E) ON 10/15/10 AT 12:39:56

CF (b)(7)(E)
09:39 10/15/2010 04193
09:39 10/15/2010 94338 (b)(7)(E)

TXT

HDR (b)(7)(E)
ATR (b)(7)(E) (b)(7)(E)

***** CRIMINAL HISTORY RECORD *****

Data As Of 2010-10-15

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number

MESSAGE IS DISPLAYED.

(b)(7)(E) (b)(7)(E) (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

PAGE 02

***** TEXT OF MESSAGE *****

Request Id
Purpose Code
Attention

(b)(7)(E)

The information in this rap sheet is subject to the following caveats:
This record is based only on the FBI number in your request. (b)(7)(E)
Because additions or deletions may be made at any time, a new copy
should be requested when needed for subsequent use. (US: 2010-10-15)
All arrest entries contained in this FBI record are based on
fingerprint comparisons and pertain to the same individual. (US:
2010-10-15)
The use of this record is regulated by law. It is provided for official
use only and may be used only for the purpose requested. (US:
2010-10-15)

***** IDENTIFICATION *****

Subject Name(s)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(c)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

MESSAGE

PAGE 03

(b)(6) (b)(7)(C)

Subject Description

FBI Number

State Id Number

(b)(6) (b)(7)(C) (b)(7)

(b)(6) (b)(7)(C) (TN)

Social Security Number

(b)(6) (b)(7)(C)

Sex

Race

Female

White

Height

Weight

Date of Birth

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

MESSAGE IS DISPLAYED.

(b)(7)(c)

(b)(7)(c)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(C)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

PAGE 04

***** TEXT OF MESSAGE *****

(b)(7)(C)

Hair Color

Eye Color

Fingerprint Pattern

(b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Place of Birth

GT

Fingerprint Images

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Earliest Event Date 1993-11-24

Arrest Date 1993-11-24

Arrest Case Number (b)(7)(C)

Arresting Agency (b)(7)(C) USINS BPSH MCALLEN

MESSAGE IS DISPLAYED.

(b)(7)(C)

(b)(7)(C)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(q)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

PAGE 05

***** TEXT OF MESSAGE *****

Charge 01
Charge Literal DEP PROC
Agency (b)(7)(q) USINS BPSH MCALLEN
Severity

***** INDEX OF AGENCIES *****
Agency FBI-CJIS DIV-CLRKSBG CLARKSBURG: (b)(7)(q)
Address 1000 CUSTER HOLLOW RD
CLARKSBURG, WV 26306

Agency USINS BPSH MCALLEN: (b)(7)(q)
Address 2301 S MAIN ST
MCALLEN, TX 78503

* * * END OF RECORD * * *
MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 10/15/10 AT 12:39:56

CR (b)(7)(E)

09:39 10/15/2010 05414

09:39 10/15/2010 94358

(b)(7)(E)

TXI

HDR (b)(7)(E)

ATN (b)(7)(E)

***** CRIMINAL HISTORY RECORD *****

Data As Of 2010-10-15

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number

(b)(7)(E)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE *****

PAGE 02

State Id Number

(b)(5), (b)(7)(C) ()

Purpose Code

C

Attention

(b)(6), (b)(7)(C)

The information in this rap sheet is subject to the following caveats:
THIS RECORD IS BASED ONLY ON THE SID OR FBI NUMBER IN YOUR REQUEST ()
(b)(6), (b)(7)(C), (b)(7)(e) BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME. A
NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. USE OF THE
FOLLOWING RECORD IS REGULATED BY LAW. IT IS FURNISHED FOR OFFICIAL USE
ONLY AND SHOULD ONLY BE USED FOR THE PURPOSE REQUESTED. WHEN
EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY
WITH THE AGENCY THAT CONTRIBUTED THE FINGERPRINTS. (TBI: 2005-06-28)

***** IDENTIFICATION *****

Subject Name(s)

(b)(6), (b)(7)(C)

(AKA)

MESSAGE IS DISPLAYED.

(b)(7)(e)

(b)(7)(e)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

TEXT OF MESSAGE

PAGE 03

(b)(6), (b)(7)(C)
Subject Description
FBI Number

(AKA)

State Id Number

(b)(6), (b)(7)(C), (b)(7)

Sex
Female
Height

Race
White
Weight

Skin Tone
Unknown
Date of Birth

(b)(6), (b)(7)(C)

Eye Color
(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Place of Birth

HN

HN

HN

Residence

Residence as of

2007-02-28

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

PAGE 04

TEXT OF MESSAGE

(b)(7)(E) (b)(7)(E)

NASHVILLE, TN

CRIMINAL HISTORY

Cycle 001

Tracking Number

Earliest Event Date

2007-02-07 Incident Date

2007-02-07

Arrest Date

2007-02-07

Arrest Case Number

(b)(7)(E) (b)(7)(E)

Arresting Agency

(b)(7)(E)

METROPOLITAN NASHVILLE PD

Subject's Name

(b)(7)(E) (b)(7)(E)

Offender Id Number

(b)(7)(E) (b)(7)(E)

Charge

1

Charge Number

(b)(7)(E) (b)(7)(E)

Charge Tracking Number

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS:

PAGE 05

***** TEXT OF MESSAGE *****
Charge Literal LICENSE, DRIVING ON SUSPENDED LICENSE
Counts 1
Severity UNKNOWN

Court Disposition (Cycle 001)
Court Case Number (b)(6), (b)(7)(C)
Court Agency (b)(7)e METROPOLITAN NASHVILLE PD
Subject's Name (b)(6), (b)(7)(C)
Charge 1
Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
Charge Literal LIC.DRIVER LIC REQ
Charge Description MISDEMEANOR
Counts 1
Severity MISDEMEANOR

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 06 *****

Disposition GUILTY PLEA - LESSER CHARGE(2007-02-28:
DISPOSITION GUILTY PLEA - LESSOR CHARGE FINE
\$50.00 COST \$166.50 SUSPENDED=N)
===== Cycle 002 =====

Tracking Number (b)(7)c
Earliest Event Date 2007-10-12 Incident Date 2007-10-12

Arrest Date 2007-10-12
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)c SMYRNA PD
Subject's Name (b)(6), (b)(7)(C)
Offender Id Number (b)(6), (b)(7)(C)
Charge 1

Charge Number (b)(6), (b)(7)(C)
Charge Tracking Number
MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

12:40

TECS II EXTERNAL MESSAGE DISPLAY

10152010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

PAGE 07

***** TEXT OF MESSAGE *****

Charge Literal DRIVING WHILE SUSPENDED
Counts 1
Severity UNKNOWN

***** INDEX OF AGENCIES *****

Agency	SMYRNA PD:	(b)(7)(E)
Agency	METROPOLITAN NASHVILLE PD:	(b)(7)(E)
Agency	SMYRNA PD:	(b)(7)(E)
Agency	METROPOLITAN NASHVILLE PD:	(b)(7)(E)
Agency	METROPOLITAN NASHVILLE PD:	(b)(7)(E)

*** END OF RECORD ***

MESSAGE IS DISPLAYED. (b)(7)(E)

END OF THIS MESSAGE
(b)(7)(E)

All-Database Search Results:

TOP (0)

TWP (1)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Add to Print Queue 1 of 1 potential matches

*****WARNING - THE
DISPLAYED IS A (b)(7)e
WANTED PERSON
RECORD. THIS
INFORMATION IS ONLY
PROVIDED TO THE
PORTAL ON A WEEKLY
BASIS. DO NOT SEARCH,
DETAIN, OR ARREST
BASED SOLELY ON THIS
RECORD. CONTACT
ENTERING AGENCY TO
CONFIRM STATUS AND
TERMS OF
WARRANT*****

Warrant #:

(b)(6), (b)(7)(C)

Date of
Violation:

01/14/2008

Notes:

TENNESSEE PICK UP ONLY, WARRANT
(b)(6), (b)(7)(C) IS A MISDEMEANOR
VIOLATION OF PROBATION ON A
MISDEMEANOR CITATION FOR
DRIVING ON A SUSPENDED LICENSE,
BOND \$2500, MNU TN SID, HEIGHT
(b)(6), (b)(7)(C) WEIGHT (b)(6), (b)(7)(C) SUBJECT IS
OF HISPANIC ETHNIC ORIGIN AND
PLACE OF BIRTH MAY BE
GUATEMALA

Gender:

F

Race:

White

Height:

Weight:

Hair Color:

(b)(6), (b)(7)(C)

Date of
Birth:

SSN:

State ID:

(b)(6), (b)(7)(C)

FBI#:

(b)(6), (b)(7)(C), (b)(7)d

DL #:

(b)(6), (b)(7)(C)

DL State:

TN

License
Year of 2008
Expiration:

Other: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), (b)(7)(D)

Originating Agency

Agency #: No Information Available

Agency Name: SMYRNA PD

Case #: (b)(6), (b)(7)(C)

The agency responsible for entering this information may be different from the agency listed above

Vehicle

No Information Submitted

For added privacy, log off and close your browser window when you are finished using this service.
This page accessed 10.15.2010 11:44AM
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Important: The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

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Your DPPA Permissible Use: Court, Law Enforcement, or Government Agencies
Your GLBA Permissible Use: Law Enforcement Purposes

Law Enforcement Report

Date: 10/15/10
Reference Code: 1

Report processed by:
DHS ICE DRO Fugitive Operations Support Center
500 12 Street SW
Washington, DC 20238
202-282-8000 Main Phone

Report Legend:

- S - Shared Address
- D - Deceased
- ✓ - Probable Current Address

Subject Information: (Best Information for Subject)

Name: (b)(6), (b)(7)(C) DOB (b)(6), (b)(7)(C)
SSN:
Age: 32

Others Associated With Subjects SSN:
(DOES NOT usually indicate any type of fraud or deception)
[None Found]

Address Summary: View All Address Variation Sources

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY (Dec 2003 -
Sep 2010)
(b)(6), (b)(7)(C) NASHVILLE TN 37217-1234, DAVIDSON COUNTY (Sep 2009 -
Dec 2009)
(b)(6), (b)(7)(C) NASHVILLE TN 37217-1233, DAVIDSON COUNTY (May 2005 -
May 2008)
(b)(6), (b)(7)(C) NASHVILLE TN 37217-1238, DAVIDSON COUNTY

Previous And Non-Verified Address(es): View All Address Variation Sources
(b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY (Dec 2003 -
Sep 2010)

Name Associated with Address:

(b)(6), (b)(7)(C)
Property Ownership Information for this Address
Property:

Parcel Number -

Name Owner: TRITEX R & F ADVISORS INC

Property Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226, DAVIDSON

COUNTY

Owner Address: (b)(6), (b)(7)(C) ATLANTA GA 30326-

1156, FULTON COUNTY

Name of Seller: FBT OF TENNESSEE INC

Data Source - A

Neighborhood Profile (2000 Census)

Average Age: 32

10/15/2010

Median Household Income: \$28,942
Median Owner Occupied Home Value: \$77,100
Average Years of Education: 11

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1234, DAVIDSON COUNTY (Sep 2009 - Dec 2009)

Name Associated with Address:

(b)(6), (b)(7)(C)

Neighborhood Profile (2000 Census)

Average Age: 32
Median Household Income: \$28,942
Median Owner Occupied Home Value: \$77,100
Average Years of Education: 11

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1233, DAVIDSON COUNTY (May 2005 - May 2008)

Name Associated with Address:

(b)(6), (b)(7)(C)

Neighborhood Profile (2000 Census)

Average Age: 32
Median Household Income: \$28,942
Median Owner Occupied Home Value: \$77,100
Average Years of Education: 11

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1238, DAVIDSON COUNTY

Name Associated with Address:

(b)(6), (b)(7)(C)

Neighborhood Profile (2000 Census)

Average Age: 32
Median Household Income: \$28,942
Median Owner Occupied Home Value: \$77,100
Average Years of Education: 11

Phones Plus(s):**Phones Plus 1**

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1233
Phone Number: 615-361 (b)(6) - CDT
Carrier: BELLSOUTH SO CNTL - (NASHVILLE , TN)

Phones Plus 2

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1233
Phone Number: 615-365 (b)(6) - CDT
Carrier: BELLSOUTH SO CNTL - (NASHVILLE , TN)

Possible Criminal Records:
[None Found]**Sexual Offenses:**
[None Found]**Driver's License Information:**

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Gender: Female
Expiration Date: 04/29/2008
Issue Date: 08/23/2006
Status: Valid
CDL Status: Valid
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: F (b)(6), (b)(7)(C)

10/15/2010

(b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Gender: Female
Expiration Date: 04/29/2008
Issue Date: 08/23/2006
Status: Suspended
CDL Status: Suspended
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Gender: Female
Expiration Date: 04/29/2008
Issue Date: 08/23/2006
Status: Eligible for reinstatement
CDL Status: Eligible for reinstatement
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Gender: Female
Expiration Date: 04/29/2008
Issue Date: 02/23/2004
Status: Valid
CDL Status: Valid
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

 Motor Vehicles Registered To Subject:

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 256 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Standard
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Anti-theft device
Roof: None / not available
Price: 25155
Radio: AM/FM CD
Front Wheel Drive: No
Four Wheel Drive: No

10/15/2010

ICE 2014-FOIA-01578-000401
ICE_Rule26_00296

Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1233, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

Sex: Female

Age: 32

Tag Number: (b)(6), (b)(7)(C)

Earliest Registration Date: 7/17/2007

Latest Registration Date: 7/17/2007

Expiration Date: 7/31/2008

License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 6 Cylinder 256 Cubic Inch

Anti Lock Brakes: 4 wheel standard

Air Conditioning: Standard

Daytime Running Lights: Standard

Power Steering: Standard

Power Brakes: Standard

Power Windows: Standard

Security System: Anti-theft device

Roof: None / not available

Price: 25155

Radio: AM/FM CD

Front Wheel Drive: No

Four Wheel Drive: No

Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C), NASHVILLE TN 37217-1233, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

Sex: Female

Age: 32

Title Number: (b)(6), (b)(7)(C)

Title Issue Date: 7/17/2007

Lien Holder(s)

Record Type: CURRENT

Company Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37210-3511, DAVIDSON COUNTY

Vehicle:

Description: (b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 4 Cylinder 140 Cubic Inch

Restraints: Driver front air bag/belt system unknown

Anti Lock Brakes: ABS standard, wheels unknown

Air Conditioning: Optional

Daytime Running Lights: Not available

Power Steering: Optional

Power Brakes: Standard

Power Windows: Optional

Security System: Unknown

Roof: None / not available

Price: 13125

Radio: AM/FM

Front Wheel Drive: No

Four Wheel Drive: No

Tilt Wheel: Optional

10/15/2010

Registrant(s)

Record Type: HISTORICAL

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1233, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

Sex: Female

Age: 32

Tag Number: (b)(6), (b)(7)(C)

Earliest Registration Date: 6/29/2006

Latest Registration Date: 6/29/2006

Expiration Date: 6/30/2007

License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 4 Cylinder 140 Cubic Inch

Restraints: Driver front air bag/belt system unknown

Anti Lock Brakes: ABS standard, wheels unknown

Air Conditioning: Optional

Daytime Running Lights: Not available

Power Steering: Optional

Power Brakes: Standard

Power Windows: Optional

Security System: Unknown

Roof: None / not available

Price: 13125

Radio: AM/FM

Front Wheel Drive: No

Four Wheel Drive: No

Tilt Wheel: Optional

Owner(s)

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1233, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

Sex: Female

Age: 32

Title Number: (b)(6), (b)(7)(C)

Title Issue Date: 5/15/2008

Lien Holder(s)

None

Vehicle:

Description: (b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 4 Cylinder 146 Cubic Inch

Anti Lock Brakes: ABS optional, wheels unknown

Air Conditioning: Optional

Daytime Running Lights: Not available

Power Steering: Standard

Power Brakes: Standard

Power Windows: Optional

Security System: None

Roof: None / not available

Price: 12750

Radio: None

Front Wheel Drive: Yes

Four Wheel Drive: No

Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

10/15/2010

ICE 2014-FOIA-01578-000403
ICE_Rule26_00298

DOB: (b)(6), (b)(7)(C)
 Sex: Female
 Age: 32
 Tag Number: (b)(6), (b)(7)(C)
 Earliest Registration Date: 11/30/2004
 Latest Registration Date: 11/30/2004
 Expiration Date: 11/30/2005
 License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
 VIN: (b)(6), (b)(7)(C)
 State Of Origin: TENNESSEE
 Engine: 4 Cylinder 146 Cubic Inch
 Anti Lock Brakes: ABS optional, wheels unknown
 Air Conditioning: Optional
 Daytime Running Lights: Not available
 Power Steering: Standard
 Power Brakes: Standard
 Power Windows: Optional
 Security System: None
 Roof: None / not available
 Price: 12750
 Radio: None
 Front Wheel Drive: Yes
 Four Wheel Drive: No
 Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
 Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
 DOB: (b)(6), (b)(7)(C)
 Sex: Female
 Age: 32
 Title Number: (b)(6), (b)(7)(C)
 Title Issue Date: 11/30/2004

Lien Holder(s)
 None

Vehicle:

Description: (b)(6), (b)(7)(C)
 VIN: (b)(6), (b)(7)(C)
 State Of Origin: TENNESSEE
 Engine: 6 Cylinder 181 Cubic Inch
 Anti Lock Brakes: ABS optional, wheels unknown
 Air Conditioning: Standard
 Daytime Running Lights: Not available
 Power Steering: Standard
 Power Brakes: Standard
 Power Windows: Standard
 Security System: None
 Roof: None / not available
 Price: 16998
 Radio: AM/FM
 Front Wheel Drive: Yes
 Four Wheel Drive: No
 Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL
 Name: (b)(6), (b)(7)(C)
 Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
 DOB: (b)(6), (b)(7)(C)
 Sex: Female
 Age: 32
 Tag Number: (b)(6), (b)(7)(C)
 Earliest Registration Date: 2/25/2004
 Latest Registration Date: 2/25/2004

10/15/2010

Latest Registration Date: 2/25/2004
Expiration Date: 2/28/2005
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 181 Cubic Inch
Anti Lock Brakes: ABS optional, wheels unknown
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: None
Roof: None / not available
Price: 16998
Radio: AM/FM
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1245, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Female
Age: 32
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 2/25/2004

Lien Holder(s)
None

 **Florida Accidents:**
[None Found]

 **Concealed Weapons Permit:**
[None Found]

 **People at Work:**
[None Found]

 **Professional License(s):**
[None Found]

 **FAA Certifications:**
[None Found]

 **FAA Aircrafts:**
[None Found]

 **Watercraft:**
[None Found]

 **Voter Registration:**
[None Found]

 **Hunting/Fishing Permit:**
[None Found]

10/15/2010

ICE 2014-FOIA-01578-000405
ICE_Rule26_00300

Liens and Judgments:

[None Found]



UCC Filings:

[None Found]



Possible Properties Owned by Subject:

[None Found]



Possible Associates:

[None Found]



Possible Relative Summary: (Click on name to link to more details within this report - No Charge)

> [REDACTED]
 > [REDACTED]
 > [REDACTED] - (AKA), Age 36
 > [REDACTED]



Possible Relatives:

[REDACTED] Age:
 Previous And Non-Verified Address(es):
 S [REDACTED] NASHVILLE TN 37217-1245, DAVIDSON COUNTY (Jul 2007 -
 Nov 2009)
 [REDACTED] Age:
 Previous And Non-Verified Address(es):
 S [REDACTED] NASHVILLE TN 37217-1233, DAVIDSON COUNTY (Jul 2007 -
 Sep 2009)
 [REDACTED] Age:
 Names Associated with Relative:
 [REDACTED] Age: 36
 Previous And Non-Verified Address(es):
 [REDACTED] NASHVILLE TN 37217-1245, DAVIDSON COUNTY (Jan 2006 -
 Sep 2010)
 615-360 [REDACTED]
 S [REDACTED] NASHVILLE TN 37217-1233, DAVIDSON COUNTY (Mar 2005 -
 Oct 2005)
 S [REDACTED] NASHVILLE TN 37217-1238, DAVIDSON COUNTY (Mar 2004 -
 Apr 2005)
 [REDACTED] Age:
 [REDACTED] Issued in Oklahoma between 1/1/1990 and 12/31/1991
 Previous And Non-Verified Address(es):
 S [REDACTED] NASHVILLE TN 37217-1233, DAVIDSON COUNTY (Jun 2008 -
 Sep 2010)
 Possible Relative:
 [REDACTED] Age:
 Previous And Non-Verified Address(es):
 S [REDACTED] NASHVILLE TN 37217-1233, DAVIDSON COUNTY
 (Mar 2010)

10/15/2010

All-Database Search Results:

TOP (0)

TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All

WOODARD, JUSTIN

1 of 1

*Current color may be
different than color stated.

Access to Interactive Vehicle,
Title, and Registration
inquiries is governed by the
Federal Driver's Privacy
Protection Act of 2000
(DPPA).

VIN#: (b)(6), (b)(7)(C)
Plate: (b)(6), (b)(7)(C)
Issued: 2006
Expired: 09/30/2011
Class: Private Passenger Car
Commercial Vehicle: N
Type: Automobile
Make: (b)(6), (b)(7)(C)
Model: Unknown
Style: (b)(6), (b)(7)(C)
Color*: (b)(6), (b)(7)(C)
Year: (b)(6), (b)(7)(C)
County: Davidson

Jointly Owned: N

Owner:

NASHVILLE TN 37211-0000

* Current color may be different than color stated.

Deconfliction

All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

1 of 1

**Current color may be
different than color stated.*

Access to Interactive Vehicle,
Title, and Registration
inquiries is governed by the
Federal Driver's Privacy
Protection Act of 2000
(DPPA).

VIN#:

(b)(6), (b)(7)(C)

Plate:

Issued:

2006

Expired:

09/30/2011

Class:

Private Passenger Car

Commercial Vehicle: N

Type:

Automobile

Make:

Model:

Style:

(b)(6), (b)(7)(C)

Color:*

Year:

County:

Davidson

Jointly Owned: N

(b)(6), (b)(7)(C)

Owner:

(b)(6), (b)(7)(C)

NASHVILLE TN 37217-0000

** Current color may be different than color stated.*

Deconfliction☐ Flag this Record

All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

1 of 1



*DL photos cannot be disseminated to the public or press without the express written consent of the Department of Safety.

Personal Information

License Type: Class D Only

Non CDL Status: VALID

CDL Status: NONE

DL#: (b)(6), (b)(7)(C)

Issued: 11/04/2008

Expires: 06/10/2011

Duplicates Issued: 1

Gender: M

Race: Hispanic

Height:

Weight:

Eye Color:

Hair Color:

D.O.B.:

SSN:

(b)(6), (b)(7)(C)

County: Davidson

Residence:

(b)(6), (b)(7)(C)

NASHVILLE, TN 37217

Last Updated: 07/20/2005

Mailing: Not Available

Last Updated: Not Available

Access to Driver License inquiries is governed by the Federal Driver's Privacy Protection Act of 2000 (DPPA).

Deconfliction

☐ Flag this Record

Handguns

No Handgun Permit

Restrictions

None

Endorsements

None

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All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C)

FLORES, DOMINGO ANTONIO

 [Print MVR Report](#) (b)(6), (b)(7)(C)

Reinstatement Eligibility Date for Non-CDL: 00/00/0000

Reinstatement Eligibility Date for CDL: 00/00/0000

Former State/Lic No: / ** UNKNOWN **

1 - 4 of 4

<u>Event Date</u>	<u>Action Date</u>	<u>Action Code</u>	<u>Location</u>	<u>Date Rec'd</u>	<u>MPH/Speed Zone</u>	<u>Case Number</u>
07/01/2007	10/02/2007	110	DAVIDSON	10/02/2007	000/000	(b)(6), (b)(7)(C)
FAILURE TO PROVIDE EVIDENCE OF FIN RESP						
07/01/2007	10/02/2007	094	DAVIDSON	10/02/2007	000/000	
REINSTATEMENT - TEST REQUIRED						
07/01/2007	07/26/2007	127	DAVIDSON	08/27/2007	000/000	
FAIL TO CHANGE LANE/SLOW DOWN FOR AUTH VEH						
08/27/2007		910	DAVIDSON	08/27/2007	000/000	
ADVISORY LETTER (DI)						

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24/7 Search and Technical Assistance 1-866-

277 (b)(7)(e)

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Advanced Person Person People At Work Death Records More Searches ▼

Last Name	First Name	Middle Name	SSN
☐ Include name variations ☒			
Street Address ☒	City	State ☒	Zip
County	Radius		
Phone ☒	DOB ☒	Age Range	
		-	
Reference: 1			

Coverage | Help?

Important: The Pul available data source Data is sometimes e incorrectly and is go More

Person Search Results

Records: 1 to 25 of 26

Result Page: 1 2 ▶

☒ Edit Search ☒ New Search ☒ Print Results ☒ Export to Excel

All	Full Name	SSN	Address	Phone	Next Steps
1.	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources (~2)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1202 Apr 05 - Aug 10	615-730- (b)(6) CDT	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report
Learn how Accurant Reports can assist you: See Examples					
2.	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources (~1)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1229 Apr 05 - Aug 10	615-730- (b)(6)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report
Learn how Accurant Reports can assist you: See Examples					
3.	(b)(6), (b)(7)(C) Gender: Male	(b)(6), (b)(7)(C) *View Sources (~2)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1229 Mar 05 - Mar 10	615-525- (b)(6) CDT	Relatives Neighbors

10/12/2010

DOB: (b)(6), (b)(7)(C) (54)		Associates	
Setup Alert		Relatives, Neighbors & Associates	
People at Work			
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples			

4.	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives
	(b)(6), (b)(7)(C)	*View Sources	NASHVILLE TN 37217-1229	Neighbors
	Gender: Male	(~1)	Aug 08 - Dec 09	Associates
	DOB: (b)(6), (b)(7)(C) (54)			Relatives, Neighbors & Associates
	Setup Alert			People at Work
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples				

5.	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives
	(b)(6), (b)(7)(C)	*View Sources	MIAMI BEACH FL 33141-2864	Neighbors
	Gender: Male	(~6)	Feb 95 - May 09	Associates
	DOB: (b)(6), (b)(7)(C) (54)			Relatives, Neighbors & Associates
	Setup Alert			People at Work
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples				

6.	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives
	(b)(6), (b)(7)(C)	*View Sources	ANTIOCH TN 37013-1270	Neighbors
	Gender: Male	(~5)	Sep 04 - Jul 07	Associates
	DOB: 06/10/1956 (54)			Relatives, Neighbors & Associates
	Setup Alert			People at Work
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples				

7.	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives
	(b)(6), (b)(7)(C)	*View Sources	ANTIOCH TN 37013-1270	Neighbors
	Gender: Male	(~1)	Sep 04 - Jul 07	Associates
	DOB: (b)(6), (b)(7)(C) (54)			Relatives, Neighbors & Associates
	Setup Alert			People at Work
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples				

8.	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives
	(b)(6), (b)(7)(C)	*View Sources	MIAMI BEACH FL 33141-2864	Neighbors
	Gender: Male	(~1)	Jul 95 - Apr 07	Associates
	DOB: (b)(6), (b)(7)(C) (54)			Relatives, Neighbors & Associates
	Setup Alert			

People at Work													
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples							
9.	COPY	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources (~1)	(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3535 Jun 01 - Nov 04	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work								
<table border="1"> <thead> <tr> <th>Reports:</th> <th> Comprehensive Report</th> <th> Other Reports</th> <th> Relavint Report</th> <th> Finder Report</th> <th> Address Report</th> <th>Learn how Accurint Reports can assist you: See Examples</th> </tr> </thead> </table>							Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples							
10.	COPY	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources (~3)	(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3535 Jan 01 - Nov 04	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work								
<table border="1"> <thead> <tr> <th>Reports:</th> <th> Comprehensive Report</th> <th> Other Reports</th> <th> Relavint Report</th> <th> Finder Report</th> <th> Address Report</th> <th>Learn how Accurint Reports can assist you: See Examples</th> </tr> </thead> </table>							Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples							
11.	COPY	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources (~2)	(b)(6), (b)(7)(C) MIAMI BEACH FL 33141 Jun 00 - Jun 03	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work								
<table border="1"> <thead> <tr> <th>Reports:</th> <th> Comprehensive Report</th> <th> Other Reports</th> <th> Relavint Report</th> <th> Finder Report</th> <th> Address Report</th> <th>Learn how Accurint Reports can assist you: See Examples</th> </tr> </thead> </table>							Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples							
12.	COPY	(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) (54) (~2) Setup Alert	(b)(6), (b)(7)(C) *View Sources	(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3636 Aug 01	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work								
<table border="1"> <thead> <tr> <th>Reports:</th> <th> Comprehensive Report</th> <th> Other Reports</th> <th> Relavint Report</th> <th> Finder Report</th> <th> Address Report</th> <th>Learn how Accurint Reports can assist you: See Examples</th> </tr> </thead> </table>							Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report	Learn how Accurint Reports can assist you: See Examples							
13.	COPY	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources (~1)	(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3636 Aug 01	Relatives Neighbors Associates Relatives, Neighbors & Associates								

10/12/2010

People at Work					
14.	COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	866-(b)(6)
		Gender: Male	*View Sources (~3)	MIAMI BEACH FL 33141-2864	Mar 01
		DOB: (b)(6), (b)(7)(C) (54)			
		Setup Alert			
Reports: Comprehensive Report Other Reports RelavInt Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples					
Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work					
15.	COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	866-(b)(6)
		Gender: Male	*View Sources (~3)	MIAMI BEACH FL 33141-2864	Mar 01
		DOB: (b)(6), (b)(7)(C) (54)			
		Setup Alert			
Reports: Comprehensive Report Other Reports RelavInt Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples					
Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work					
16.	COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	
		Gender: Male	*View Sources (~1)	MIAMI BEACH FL 33141	Jun 00
		DOB: (b)(6), (b)(7)(C) (54)			
		Setup Alert			
Reports: Comprehensive Report Other Reports RelavInt Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples					
Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work					
17.	COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	
		Gender: Male	*View Sources (~1)	MIAMI FL 33141	Apr 97 - Jan 99
		DOB: (b)(6), (b)(7)(C) (54)			
		Setup Alert			
Reports: Comprehensive Report Other Reports RelavInt Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples					
Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work					
18.	COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	
		Gender: Male	*View Sources (~1)	MIAMI BEACH FL 33141	Jul 95
		DOB: (b)(6), (b)(7)(C) (54)			
		Setup Alert			
Reports: Comprehensive Report Other Reports RelavInt Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples					
Relatives Neighbors Associates Relatives, Neighbors &					

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ICE.2014-FOIA-01578.000415

					Associates People at Work
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report
					Learn how Accurint Reports can assist you: See Examples

19.		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work												
		*View Sources	MIAMI BEACH FL 33141														
		(~1)	Jul 95														
		Gender: Male															
		DOB: (b)(6), (b)(7)(C) (54)															
		Setup Alert															
<table border="1"> <tr> <td>Reports:</td> <td> Comprehensive Report</td> <td> Other Reports</td> <td> Relavint Report</td> <td> Finder Report</td> <td> Address Report</td> </tr> <tr> <td colspan="5"></td> <td>Learn how Accurint Reports can assist you: See Examples</td> </tr> </table>						Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report						Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report												
					Learn how Accurint Reports can assist you: See Examples												

20.		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work												
		*View Sources	MIAMI BEACH FL 33139-8117														
		(~1)	Dec 95														
		Gender: Male															
		DOB: (b)(6), (b)(7)(C) (54)															
		Setup Alert															
<table border="1"> <tr> <td>Reports:</td> <td> Comprehensive Report</td> <td> Other Reports</td> <td> Relavint Report</td> <td> Finder Report</td> <td> Address Report</td> </tr> <tr> <td colspan="5"></td> <td>Learn how Accurint Reports can assist you: See Examples</td> </tr> </table>						Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report						Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report												
					Learn how Accurint Reports can assist you: See Examples												

21.		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work												
		*View Sources	MIAMI FL 33139														
		(~1)	Jan 94														
		Gender: Male															
		DOB: (b)(6), (b)(7)(C) (54)															
		Setup Alert															
<table border="1"> <tr> <td>Reports:</td> <td> Comprehensive Report</td> <td> Other Reports</td> <td> Relavint Report</td> <td> Finder Report</td> <td> Address Report</td> </tr> <tr> <td colspan="5"></td> <td>Learn how Accurint Reports can assist you: See Examples</td> </tr> </table>						Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report						Learn how Accurint Reports can assist you: See Examples
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report												
					Learn how Accurint Reports can assist you: See Examples												

22.		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	86 (b)(6)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work														
		*View Sources	MIAMI BEACH FL 33141																	
		(~2)																		
		Gender: Male																		
		DOB: (b)(6), (b)(7)(C) (54)																		
		Setup Alert																		
<table border="1"> <tr> <td>Reports:</td> <td> Comprehensive Report</td> <td> Other Reports</td> <td> Relavint Report</td> <td> Finder Report</td> <td> Address Report</td> <td></td> </tr> <tr> <td colspan="5"></td> <td colspan="2">Learn how Accurint Reports can assist you: See Examples</td> </tr> </table>							Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report							Learn how Accurint Reports can assist you: See Examples	
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report															
					Learn how Accurint Reports can assist you: See Examples															

23.		(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	866 (b)(6)	Relatives Neighbors Associates Relatives,
		*View Sources	MIAMI BEACH FL 33139			
		(~2)				
		Gender: Male				
		DOB: (b)(6), (b)(7)(C) (54)				

10/12/2010

Setup Alert		Neighbors & Associates People at Work	
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurant Reports can assist you: See Examples			
24. COPY	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources MIAMI BEACH FL 33141 (~2)	866- (b)(6) Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurant Reports can assist you: See Examples			
25. COPY	(b)(6), (b)(7)(C) Gender: Male DOB: (b)(6), (b)(7)(C) (54) Setup Alert	(b)(6), (b)(7)(C) *View Sources NASHVILLE TN 37217-1229 Aug 05 - Sep 10 (~3)	615-730- (b)(6) CDT Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report Learn how Accurant Reports can assist you: See Examples			

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 Your GLBA Permissible Use: Law Enforcement Purposes



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Your GLBA Permissible Use: Law Enforcement Purposes

Law Enforcement Report

Date: 10/12/10

Reference Code: 1

Report processed by:

DHS ICE DRO Fugitive Operations Support Center
500 12 Street SW
Washington, DC 20236
202-282-8000 Main Phone

Report Legend:

S - Shared Address

D - Deceased

✓ - Probable Current Address

Subject Information: (Best Information for Subject)

Name: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C)

SSN: (b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

View All SSN Sources

Age: 54

Names Associated With Subject: View All Name Variations Sources

(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 54

(b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 54

(b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 54

(b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 54

(b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 54

(b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

(b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 54

(b)(6), (b)(7)(C) Issued in Florida between 1/1/1986 and 12/31/1986

Others Associated With Subjects SSN:

(DOES NOT usually indicate any type of fraud or deception)

[None Found]

Address Summary: View All Address Variation Sources

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1229, DAVIDSON COUNTY (Apr 2006 - Sep 2010)

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1202, DAVIDSON COUNTY (Apr 2006 - Aug 2010)

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1229, DAVIDSON COUNTY (Mar 2005 - Mar 2010)

(b)(6), (b)(7)(C) ANTIOCH TN 37013-1270, DAVIDSON COUNTY (Sep 2004 - Jul 2007)

(b)(6), (b)(7)(C)

10/12/2010

ICE.2014-FOIA-01578.000418
ICE_Rule26_00313

(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-2864, MIAMI-DADE COUNTY (Feb 1995 - Apr 2007)
 (b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3535, MIAMI-DADE COUNTY (Jan 2001 - Nov 2004)
 (b)(6), (b)(7)(C) MIAMI BEACH FL 33141, MIAMI-DADE COUNTY (Jul 1996 - Jun 2003)
 (b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3636, MIAMI-DADE COUNTY (Aug 2001)
 (b)(6), (b)(7)(C) MIAMI FL 33141, MIAMI-DADE COUNTY (Apr 1997 - Jan 1999)
 (b)(6), (b)(7)(C) MIAMI BEACH FL 33139-8117, MIAMI-DADE COUNTY (Dec 1995)
 (b)(6), (b)(7)(C) MIAMI FL 33139, MIAMI-DADE COUNTY (Jan 1994)
 (b)(6), (b)(7)(C) MIAMI BEACH FL 33139, MIAMI-DADE COUNTY
 (b)(6), (b)(7)(C) MIAMI BEACH FL 33141, MIAMI-DADE COUNTY

Previous And Non-Verified Address(es): View All Address Variation Sources

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1229, DAVIDSON COUNTY (Apr 2006 - Sep 2010)

Name Associated with Address:

(b)(6), (b)(7)(C)
 Property Ownership Information for this Address
 Property:

Parcel Number -
 Name Owner : TRITEX R & E ADVISORS INC
 Property Address: - (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226, DAVIDSON COUNTY
 Owner Address:
 (b)(6), (b)(7)(C) ATLANTA GA 30326-1156, FULTON COUNTY

Name of Seller : FBT OF TENNESSEE INC
 Data Source - A
 Neighborhood Profile (2000 Census)

Average Age: 32
 Median Household Income: \$28,942
 Median Owner Occupied Home Value: \$77,100
 Average Years of Education: 11
 (b)(6), (b)(7)(C) NASHVILLE TN 37217-1202, DAVIDSON COUNTY (Apr 2006 - Aug 2010)

Name Associated with Address:

(b)(6), (b)(7)(C)
 615-730 (b)(6)

Neighborhood Profile (2000 Census)

Average Age: 32
 Median Household Income: \$28,942
 Median Owner Occupied Home Value: \$77,100
 Average Years of Education: 11
 (b)(6), (b)(7)(C) NASHVILLE TN 37217-1229, DAVIDSON COUNTY (Mar 2005 - Mar 2010)

Name Associated with Address:

(b)(6), (b)(7)(C)
 Neighborhood Profile (2000 Census)

Average Age: 32
 Median Household Income: \$28,942
 Median Owner Occupied Home Value: \$77,100
 Average Years of Education: 11
 (b)(6), (b)(7)(C) ANTIOCH TN 37013-1270, DAVIDSON COUNTY (Sep 2004 - Jul 2007)

Name Associated with Address:

(b)(6), (b)(7)(C)
 Current Residents at Address:

(b)(6), (b)(7)(C)
 615-365 (b)(6) (b)(6), (b)(7)(C)

10/12/2010

Property Ownership Information for this Address**Property:**

Parcel Number - (b)(6), (b)(7)(C)
Name Owner : (b)(6), (b)(7)(C)
Property Address : (b)(6), (b)(7)(C) ANTIOCH
TN 37013-1270, DAVIDSON COUNTY
Owner Address: (b)(6), (b)(7)(C) ANTIOCH
TN 37013-1270, DAVIDSON COUNTY
Sale Date - 08/08/2001
Sale Price - \$70,900
Total Market Value - \$94,100
Assessed Value - \$23,525
Land Value - \$18,500
Improvement Value - \$75,600
Land Size - 6,969 Square Feet
Year Built - 1986
Name of Seller : (b)(6), (b)(7)(C)
Loan Amount - \$69,750
Loan Type - CONVENTIONAL
Lender Name - UNION PLANTERS BK
Data Source - A

Neighborhood Profile (2000 Census)

Average Age: 34
Median Household Income: \$58,661
Median Owner Occupied Home Value: \$122,300
Average Years of Education: 14
(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-2864, MIAMI-
DADE COUNTY (Feb 1995 - Apr 2007)

Name Associated with Address:

(b)(6), (b)(7)(C)
Property Ownership Information for this Address
Property:

Parcel Number -
Name Owner : DECO PROPERTY MANAGEMENT INC
Property Address : (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2889, MIAMI-DADE COUNTY
Owner Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-1030, MIAMI-DADE COUNTY
Name of Seller : NORMANDY APARTMENTS
ASSOCIATES

Data Source - A

Neighborhood Profile (2000 Census)

Average Age: 38
Median Household Income: \$22,176
Median Owner Occupied Home Value: \$79,500
Average Years of Education: 12
(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3535, MIAMI-
DADE COUNTY (Jan 2001 - Nov 2004)

Name Associated with Address:

(b)(6), (b)(7)(C)
Property Ownership Information for this Address
Property:

Parcel Number -
Name Owner : (b)(6), (b)(7)(C)
Property Address : (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-3535, MIAMI-DADE COUNTY
Name of Seller : (b)(6), (b)(7)(C)

Data Source - A

Property:

Parcel Number - (b)(6), (b)(7)(C)
Book - (b)(6), (b)(7)(C)
Page - (b)(6), (b)(7)(C)
Name Owner (b)(6), (b)(7)(C) MIAMI BEACH
Property Address: (b)(6), (b)(7)(C)
FL 33141-3535, MIAMI-DADE COUNTY
Sale Date - 12/11/2001
Sale Price - \$234,000
Land Usage - MULTI FAMILY 10 UNITS LESS
Total Market Value - \$170,440

10/12/2010

Assessed Value - \$170,440
Land Value - \$64,103
Improvement Value - \$106,337
Land Size - 5,549 Square Feet
Year Built - 1945
Name of Seller - (b)(6), (b)(7)(C)
Loan Amount - \$230,455
Loan Type - FEDERAL HOUSING AUTHORITY
Lender Name - CHASE MANHATTAN MTG
Data Source - A

Property:

Parcel Number - (b)(6), (b)(7)(C)
Name Owner - (b)(6), (b)(7)(C)
Property Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-3535, MIAMI-DADE COUNTY
Owner Address: (b)(6), (b)(7)(C) MIAMI
BEACH FL 33141-3535, MIAMI-DADE COUNTY
Name of Seller : (b)(6), (b)(7)(C)
Name of Seller 2 (b)(6), (b)(7)(C)

Data Source - B

Neighborhood Profile (2000 Census)

Average Age: 33
Median Household Income: \$21,441
Median Owner Occupied Home Value: \$88,200
Average Years of Education: 13
(b)(6), (b)(7)(C) MIAMI BEACH FL 33141, MIAMI-DADE
COUNTY (Jul 1996 - Jun 2003)

Name Associated with Address:

(b)(6), (b)(7)(C)
Neighborhood Profile (2000 Census)

Average Age: 37
Median Household Income: \$40,781
Median Owner Occupied Home Value: \$228,400
Average Years of Education: 14
(b)(6), (b)(7)(C) MIAMI BEACH FL 33141-3636, MIAMI-DADE
COUNTY (Aug 2001)

Name Associated with Address:

(b)(6), (b)(7)(C)
Current Residents at Address:

(b)(6), (b)(7)(C)

Property Ownership Information for this Address**Property:**

Parcel Number - (b)(6), (b)(7)(C)
Book - (b)(6), (b)(7)(C)
Page - (b)(6), (b)(7)(C)
Name Owner : (b)(6), (b)(7)(C)
Property Address: - (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-3636, MIAMI-DADE COUNTY
Owner Address: (b)(6), (b)(7)(C) MIAMI FL 33142-
7429, MIAMI-DADE COUNTY

Sale Date - 08/21/2001
Sale Price - \$250,000
Land Usage - SFR
Total Market Value - \$290,240
Assessed Value - \$290,240
Land Value - \$88,000
Improvement Value - \$202,240
Land Size - 6,875 Square Feet
Year Built - 1953

Name of Seller : (b)(6), (b)(7)(C)
Loan Amount - \$200,000
Loan Type - CONVENTIONAL
Lender Name - PSP DIRECT
Data Source - A

Neighborhood Profile (2000 Census)

Average Age: 43
Median Household Income: \$40,893
Median Owner Occupied Home Value: \$142,200
Average Years of Education: 11

(b)(7)(c)

10/12/2010

Average Years of Education: 11

(b)(6), (b)(7)(C) MIAMI FL 33141, MIAMI-DADE COUNTY (Apr 1997 - Jan 1999)

Name Associated with Address:

(b)(6), (b)(7)(C)

Neighborhood Profile (2000 Census)

Average Age: 37

Median Household Income: \$40,781

Median Owner Occupied Home Value: \$228,400

Average Years of Education: 14

(b)(6), (b)(7)(C) MIAMI BEACH FL 33139-8117, MIAMI-DADE COUNTY (Dec 1995)

Name Associated with Address:

(b)(6), (b)(7)(C)

Property Ownership Information for this Address**Property:**

Parcel Number -

(b)(6), (b)(7)(C)

Name Own

Property Address:

(b)(6), (b)(7)(C)

MIAMI BEACH

FL 33139-8117, MIAMI-DADE COUNTY

Owner Address:

(b)(6), (b)(7)(C)

MIAMI BEACH FL 33139-

8712, MIAMI-DADE COUNTY

Total Market Value - \$220,000

Assessed Value - \$220,000

Improvement Value - \$220,000

Year Built - 1935

Data Source - A

Neighborhood Profile (2000 Census)

Average Age: 39

Median Household Income: \$25,035

Median Owner Occupied Home Value: \$144,100

Average Years of Education: 13

(b)(6), (b)(7)(C) MIAMI FL 33139, MIAMI-DADE COUNTY (Jan 1994)

Name Associated with Address:

(b)(6), (b)(7)(C)

Neighborhood Profile (2000 Census)

Average Age: 41

Median Household Income: \$27,529

Median Owner Occupied Home Value: \$87,900

Average Years of Education: 14

(b)(6), (b)(7)(C) MIAMI BEACH FL 33139, MIAMI-DADE COUNTY

Name Associated with Address:

(b)(6), (b)(7)(C)

866- (b)(6)

Neighborhood Profile (2000 Census)

Average Age: 41

Median Household Income: \$27,529

Median Owner Occupied Home Value: \$87,900

Average Years of Education: 14

(b)(6), (b)(7)(C) MIAMI BEACH FL 33141, MIAMI-DADE COUNTY

Name Associated with Address:

(b)(6), (b)(7)(C)

866- (b)(6)

Neighborhood Profile (2000 Census)

Average Age: 37

Median Household Income: \$40,781

Median Owner Occupied Home Value: \$228,400

Average Years of Education: 14

Phones Plus(s):

Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C)

NASHVILLE TN 37217-1202

Phone Number: 615-730- (b)(6) - CDT

Phone Type: Mobile

Carrier: CRICKET COMM - (NASHVILLE , TN)

10/12/2010

ICE 2014-FOIA-01578.000422
ICE_Rule26_00317

 Possible Criminal Records:
[None Found]

 Sexual Offenses:
[None Found]

 Driver's License Information:

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1229, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 11/04/2008
Status: Valid
CDL Status: Eligible for reinstatement
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 11/08/2007
Status: Valid
CDL Status: Eligible for reinstatement
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 05/30/2007
Status: Valid
CDL Status: Valid
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee

10/12/2010

License Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 05/30/2007
Status: Eligible for reinstatement
CDL Status: Eligible for reinstatement
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 07/20/2005
Status: Valid
CDL Status: Valid
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 07/20/2005
Status: Valid
CDL Status: Valid
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) ANTIOCH TN 37013-
1270, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Expiration Date: 06/10/2011
Issue Date: 10/05/2004
Status: Valid
CDL Status: Valid
License Class: Class D Only
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)

10/12/2010

Weight: (b)(6), (b)(7)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)
Eye Color: (b)(6), (b)(7)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Tennessee
License Address: (b)(6), (b)(7)(C) ANTIOCH TN 37013-
1270, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Issue Date: 09/02/2004
Status: Valid
CDL Status: Valid
License Type: HISTORY ONLY (NOT PRINTED)
Height: (b)(6), (b)(7)
Weight: (b)(6), (b)(7)
Data Source: Governmental
Hair Color: (b)(6), (b)(7)
Eye Color: (b)(6), (b)(7)

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Florida
License Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
DOD:
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Ethnicity: WHITE
Expiration Date: 06/10/2006
Issue Date: 06/12/2000
License Class: Non-Commercial - Regular Operator License
Height: (b)(6), (b)(7)
Data Source: Governmental

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Florida
License Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
DOD:
Potential SSN (b)(6), (b)(7)(C)
Gender: Male
Ethnicity: WHITE
License Type: RECORD DELETED
Height: (b)(6), (b)(7)
Data Source: Governmental

Name: (b)(6), (b)(7)(C)
DL Number: (b)(6), (b)(7)(C)
State: Florida
License Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Potential SSN (b)(6), (b)(7)(C)
Data Source: Non-Governmental

 Motor Vehicles Registered To Subject:

Vehicle:
Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE

10/12/2010

Engine: 4 Cylinder 146 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Immobilizer
Roof: Power sun/moon roof
Price: 22100
Radio: AM/FM CD
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Standard

Registrant(s)

Record Type: CURRENT
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1229, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 3/13/2008
Latest Registration Date: 3/31/2010
Expiration Date: 3/31/2011
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 4 Cylinder 146 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Immobilizer
Roof: Power sun/moon roof
Price: 22100
Radio: AM/FM CD
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1229, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 3/13/2008

Lien Holder(s)

Record Type: CURRENT
Company Name: IMPORT CONNECTION
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37210-
2914, DAVIDSON COUNTY

Vehicle:

Description: (b)(6), (b)(7)(C)

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 244 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Passive Engine Immobilizer & alarm
Roof: None / not available
Price: 19000
Radio: AM/FM CD
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C), NASHVILLE TN 37217-
1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 1/4/2010
Latest Registration Date: 1/4/2010
Expiration Date: 1/31/2011
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 244 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Passive Engine Immobilizer & alarm
Roof: None / not available
Price: 19000
Radio: AM/FM CD
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C), NASHVILLE TN 37217-
1226, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 1/4/2010

Lien Holder(s)

Record Type: HISTORICAL
Company Name: METRO IMPORTS INC.
Address: (b)(6), (b)(7)(C), NASHVILLE TN 37211-
5249, DAVIDSON COUNTY

10/12/2010

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 231 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Optional
Daytime Running Lights: Optional
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Unknown
Roof: None / not available
Price: 17889
Radio: AM/FM
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Optional

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1229, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 8/18/2008
Latest Registration Date: 8/18/2008
Expiration Date: 8/31/2009
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 231 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Optional
Daytime Running Lights: Optional
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Unknown
Roof: None / not available
Price: 17889
Radio: AM/FM
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Optional

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE
TN 37217-1229, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 8/18/2008

Lien Holder(s)
None

10/12/2010

ICE.2014-FOIA-01578.000428
ICE_Rule26_00323

Vehicle:

Description: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 6 Cylinder 181 Cubic Inch

Anti Lock Brakes: 4 wheel optional

Air Conditioning: Standard

Daytime Running Lights: Not available

Power Steering: Standard

Power Brakes: Standard

Power Windows: Standard

Security System: None

Roof: None / not available

Price: 22747

Radio: AM/FM CD

Front Wheel Drive: No

Four Wheel Drive: No

Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL

Name: (b)(6), (b)(7)(C)

Potential SSN: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE

TN 37217-1229, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

Sex: Male

Age: 54

Tag Number: (b)(6), (b)(7)(C)

Earliest Registration Date: 3/15/2006

Latest Registration Date: 3/31/2007

Expiration Date: 3/31/2008

License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

VIN: (b)(6), (b)(7)(C)

State Of Origin: TENNESSEE

Engine: 6 Cylinder 181 Cubic Inch

Anti Lock Brakes: 4 wheel optional

Air Conditioning: Standard

Daytime Running Lights: Not available

Power Steering: Standard

Power Brakes: Standard

Power Windows: Standard

Security System: None

Roof: None / not available

Price: 22747

Radio: AM/FM CD

Front Wheel Drive: No

Four Wheel Drive: No

Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)

Potential SSN: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE

TN 37217-1229, DAVIDSON COUNTY

DOB: (b)(6), (b)(7)(C)

Sex: Male

Age: 54

Title Number: (b)(6), (b)(7)(C)

Title Issue Date: 3/15/2006

Lien Holder(s)

Record Type: CURRENT

Company Name: (b)(6), (b)(7)(C)

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37211-2354, DAVIDSON COUNTY

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 4 Cylinder 132 Cubic Inch
Anti Lock Brakes: 4 wheel optional
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Unknown
Roof: None / not available
Price: 19558
Radio: AM/FM Cassette
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Standard

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: 3008 WOODYMORE PL, ANTIOCH TN 37013-1270, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 5/24/2006
Latest Registration Date: 5/24/2006
Expiration Date: 5/31/2007
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 4 Cylinder 132 Cubic Inch
Anti Lock Brakes: 4 wheel optional
Air Conditioning: Standard
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Unknown
Roof: None / not available
Price: 19558
Radio: AM/FM Cassette
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) ANTIOCH TN 37013-1270, DAVIDSON COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 5/6/2005

10/12/2010

ICE 2014-FOIA-01578-000430
ICE_Rule26_00325

THE ISSUANCE DATE: 3/1/2005

Lien Holder(s)

Record Type: HISTORICAL
 Company Name: (b)(6), (b)(7)(C)
 Address: (b)(6), (b)(7)(C) NASHVILLE TN 37209-3936, DAVIDSON COUNTY

Vehicle:

Description: (b)(6), (b)(7)(C)
 VIN: (b)(6), (b)(7)(C)
 State Of Origin: TENNESSEE
 Engine: 4 Cylinder 146 Cubic Inch
 Anti Lock Brakes: ABS standard, wheels unknown
 Air Conditioning: Optional
 Daytime Running Lights: Unknown
 Power Steering: Unknown
 Power Brakes: Standard
 Power Windows: Optional
 Security System: Unknown
 Roof: None / not available
 Price: 14640
 Radio: None
 Front Wheel Drive: No
 Four Wheel Drive: No
 Tilt Wheel: Unknown

Registrant(s)

Record Type: HISTORICAL
 Name: (b)(6), (b)(7)(C)
 Potential SSN: (b)(6), (b)(7)(C)
 Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1229, DAVIDSON COUNTY
 DOB: (b)(6), (b)(7)(C)
 Sex: Male
 Age: 54
 Tag Number: (b)(6), (b)(7)(C)
 Earliest Registration Date: 3/14/2005
 Latest Registration Date: 3/14/2005
 Expiration Date: 3/31/2006
 License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
 VIN: (b)(6), (b)(7)(C)
 State Of Origin: TENNESSEE
 Engine: 4 Cylinder 146 Cubic Inch
 Anti Lock Brakes: ABS standard, wheels unknown
 Air Conditioning: Optional
 Daytime Running Lights: Unknown
 Power Steering: Unknown
 Power Brakes: Standard
 Power Windows: Optional
 Security System: Unknown
 Roof: None / not available
 Price: 14640
 Radio: None
 Front Wheel Drive: No
 Four Wheel Drive: No
 Tilt Wheel: Unknown

Owner(s)

Name: (b)(6), (b)(7)(C)
 Potential SSN: (b)(6), (b)(7)(C)
 Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1229, DAVIDSON COUNTY
 DOB: (b)(6), (b)(7)(C)
 Sex: Male

(b)(7)(C)

10/12/2010

Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 6/3/2005

Lien Holder(s)

Record Type: CURRENT
Company Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37209-
3936, DAVIDSON COUNTY

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
Vehicle Use: PRIVATE
State Of Origin: FLORIDA
Engine: 4 Cylinder 146 Cubic Inch -- Gas Powered
Restraints: Driver front air bag/passenger side active belt
Anti Lock Brakes: Rear only standard
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Standard
Power Brakes: Standard
Power Windows: Standard
Security System: Unknown
Roof: Manual sun/moon roof
Price: 14149
Radio: AM/FM Cassette
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Standard

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
DL #: (b)(6), (b)(7)(C)
Title Number: (b)(6), (b)(7)(C)
Title Status: Transfer
Title Issue Date: 5/11/2000
Odometer Mileage: 54648

Registrant(s)

Record Type: EXPIRED
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
DL #: (b)(6), (b)(7)(C)
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 6/8/2001
Latest Registration Date: 6/8/2001
Expiration Date: 6/10/2002
Decal Date: 2002
License Plate Type: Car & Pickup Tags (County Name)

Lien Holder(s)

Record Type: HISTORICAL
Company Name: CHASE MANHATTAN BANK USA NA
Lien Date: 5/4/2000

.....

10/12/2010

ICE 2014-FOIA-01578.000432
ICE_Rule26_00327

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: FLORIDA
Engine: 4 Cylinder 122 Cubic Inch -- Gas Powered
Anti Lock Brakes: Not available
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Optional
Power Brakes: Not available
Power Windows: Not available
Security System: None
Roof: None / not available
Price: 6195
Radio: AM/FM
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Optional

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 4/15/1997
Latest Registration Date: 4/15/1997
Expiration Date: 6/10/1998
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: FLORIDA
Engine: 4 Cylinder 122 Cubic Inch -- Gas Powered
Anti Lock Brakes: Not available
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Optional
Power Brakes: Not available
Power Windows: Not available
Security System: None
Roof: None / not available
Price: 6195
Radio: AM/FM
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Optional

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 4/15/1997

Lien Holder(s)
None

Vehicle:

(b)(7)(C)

10/12/2010

ICE 2014-FOIA-01578.000433
ICE_Rule26_00328

Vehicle:
Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: FLORIDA
Engine: 4 Cylinder 97 Cubic Inch -- Gas Powered
Anti Lock Brakes: Not available
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Optional
Power Brakes: Standard
Power Windows: Not available
Security System: None
Roof: None / not available
Price: 9278
Radio: AM/FM
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Optional

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 7/3/1996
Latest Registration Date: 7/3/1996
Expiration Date: 6/10/1997
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: FLORIDA
Engine: 4 Cylinder 97 Cubic Inch -- Gas Powered
Anti Lock Brakes: Not available
Air Conditioning: Optional
Daytime Running Lights: Not available
Power Steering: Optional
Power Brakes: Standard
Power Windows: Not available
Security System: None
Roof: None / not available
Price: 9278
Radio: AM/FM
Front Wheel Drive: Yes
Four Wheel Drive: No
Tilt Wheel: Optional

Owner(s)

Name: (b)(6), (b)(7)(C)
Potential SSN: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH
FL 33141-2864, MIAMI-DADE COUNTY
DOB: (b)(6), (b)(7)(C)
Sex: Male
Age: 54
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 7/3/1996

Lien Holder(s)
None

CSW

10/12/2010

Florida Accidents:

Date/Time: SUNDAY, 01/12/1997 13:28
City: Miami Beach
County: Dade

Vehicle 1 - Vehicle was traveling (b)(6), (b)(7)(C) Estimated
speed was 25 mph in a 30 mph speed zone

Type: (b)(6), (b)(7)(C) Automobile
Tag: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
Fault: Vehicle Not-At-Fault

Driver

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH FL 33141, 120 COUNTY
DL #: (b)(6), (b)(7)(C)
DL State: FL

Owner

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NORTH BAY VLG FL 33141-
4383, 120 COUNTY

Vehicle 2 - Vehicle was traveling (b)(6), (b)(7)(C) Estimated
speed was 15 mph in a 30 mph speed zone

Type: (b)(6), (b)(7)(C) - Automobile
Tag: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
Fault: Vehicle At-Fault

Driver

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI BEACH FL 33141, 120
COUNTY
DL #: (b)(6), (b)(7)(C)
DL State: FL

Owner

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MIAMI FL 33141-2889, 120
COUNTY
DL #: (b)(6), (b)(7)(C)

Concealed Weapons Permit:
[None Found]

People at Work:

Name: (b)(6), (b)(7)(C)
Title: CONTACT
SSN: (b)(6), (b)(7)(C)
Company: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1229
Phone:
FEIN:
Dates: Jan 31, 2006 - Mar 1, 2006

Name: (b)(6), (b)(7)(C)
SSN: (b)(6), (b)(7)(C)
Company: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226
Phone: 615-399 (b)(6)
FEIN:
Dates: Jun 1, 2004 - Sep 3, 2004

Name: (b)(6), (b)(7)(C)
Title: CONTACT
SSN: (b)(6), (b)(7)(C)
Company: (b)(6), (b)(7)(C)

10/12/2010

ICE 2014-FOIA-01578-000435
ICE_Rule26_00330

Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226
Phone: 615-399-(b)(6)
FEIN:
Dates: Jun 30, 2004 - Aug 1, 2004

 Professional License(s):
[None Found]

 FAA Certifications:
[None Found]

 FAA Aircrafts:
[None Found]

 Watercraft:
[None Found]

 Voter Registration:
[None Found]

 Hunting/Fishing Permit:
[None Found]

 Liens and Judgments:

Filing Number: (b)(6), (b)(7)(C)
Filing Type: FEDERAL TAX LIEN RELEASE
Location: DAVIDSON CO REGISTER OF DEEDS
State: TN

Filing Number: (b)(6), (b)(7)(C)
Filing Type: FEDERAL TAX LIEN
Location: DAVIDSON CO REGISTER OF DEEDS
State: TN

Original Filing Date: 4/18/2006
Release Date: 4/16/2010

Amount: \$2,815

Debtor Name: (b)(6), (b)(7)(C)

Debtor SSN: (b)(6), (b)(7)(C)

Debtor Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-

1229

Debtor Name: (b)(6), (b)(7)(C)

Debtor SSN: (b)(6), (b)(7)(C)

Debtor Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-

1229

Debtor Name: (b)(6), (b)(7)(C)

Debtor SSN: (b)(6), (b)(7)(C)

Debtor Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-

1229

Debtor Name: (b)(6), (b)(7)(C)

Debtor SSN:

Debtor Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-

1229

Creditor: INTERNAL REVENUE SERVICE

Filing Number: (b)(6), (b)(7)(C)
Filing Type: FEDERAL TAX LIEN
Location: DAVIDSON CO REGISTER OF DEEDS
State: TN

Original Filing Date: 9/8/2004

Amount: \$5,339

Debtor Name: (b)(6), (b)(7)(C)

Debtor SSN: (b)(6), (b)(7)(C)

Debtor Address: (b)(6), (b)(7)(C) ANTIOCH TN 37013-1270

Debtor Name: (b)(6), (b)(7)(C)

Debtor SSN:

10/12/2010

Debtor SSN: [REDACTED]
Debtor Address: [REDACTED] ANTIOCH TN 37013-1270
Creditor: IRS

Filing Number: [REDACTED]
Filing Type: SMALL CLAIMS JUDGMENT
Book/Page: [REDACTED]
Location: DADE COUNTY CIRCUIT COURT
State: FL
Original Filing Date: 9/3/2003
Amount: \$2,063

Debtor Name: [REDACTED]
Debtor SSN: [REDACTED]
Debtor Address: [REDACTED] MIAMI BEACH
FL 33141-2864
Creditor: CAPITAL ONE FSB

 **UCC Filings:**
[None Found]

 Possible Properties Owned by Subject:

Property:

Parcel Number - [REDACTED]
Book - [REDACTED]
Page - [REDACTED]
Property Address: [REDACTED] MIAMI BEACH
FL 33141-3535, MIAMI-DADE COUNTY
Sale Date - 12/11/2001
Sale Price - \$234,000
Loan Amount - \$230,455
Loan Type - FEDERAL HOUSING AUTHORITY
Data Source - A

Property:

Parcel Number - [REDACTED]
Book - [REDACTED]
Page - [REDACTED]
Name Owner : [REDACTED]
Property Address: [REDACTED] MIAMI BEACH
FL 33141-3535, MIAMI-DADE COUNTY
Sale Date - 12/11/2001
Sale Price - \$234,000
Land Usage - MULTI FAMILY 10 UNITS LESS
Total Market Value - \$170,440
Assessed Value - \$170,440
Land Value - \$64,103
Improvement Value - \$106,337
Land Size - 5,549 Square Feet
Year Built - 1945
Name of Seller : [REDACTED]
Loan Amount - \$230,455
Loan Type - FEDERAL HOUSING AUTHORITY
Lender Name - CHASE MANHATTAN MTG
Data Source - A

Property:

Parcel Number - [REDACTED]
Book - [REDACTED]
Page - [REDACTED]
Property Address: [REDACTED] MIAMI BEACH
FL 33141-3535, MIAMI-DADE COUNTY
Owner Address: [REDACTED] MIAMI BEACH FL 33141-
3535, MIAMI-DADE COUNTY
Sale Date - 12/28/2000
Sale Price - \$265,000
Loan Amount - \$251,750
Loan Type - CONVENTIONAL

10/12/2010

ICE 2014-FOIA-01578-000437
ICE_Rule26_00332

All-Database Search Results:

TOP (0)TWP (0)

(b)(6), (b)(7)(C)

1 of 7 [next](#)

**Current color may be
different than color stated.*

Access to Interactive Vehicle,
Title, and Registration
inquiries is governed by the
Federal Driver's Privacy
Protection Act of 2000
(DPPA).

VIN#: (b)(6), (b)(7)(C)
Plate: (b)(6), (b)(7)(C)
Issued: 2006
Expired: 10/31/2010
Class: Private Passenger Car

Commercial Vehicle: N
Type: Truck
Make: (b)(6), (b)(7)(C)
Model: Unknown
Style: (b)(6), (b)(7)(C)
Color:* (b)(6), (b)(7)(C)
Year:
County: Davidson

Jointly Owned: Y
(b)(6), (b)(7)(C)
Owner 1: (b)(6), (b)(7)(C)
NASHVILLE TN 37211-0000
Owner 2: (b)(6), (b)(7)(C)

** Current color may be different than color stated.*

Deconfliction☐ Flag this Record

Lessor

Vehicle not leased

Lien

08/26/2008

(b)(1)(c) (b)(1)(c)

NASHVILLE TN 37211-0000

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All-Database Search Results:

TOP (0)TWP (0)

(b)(6), (b)(7)(C)

[prev](#) 3 of 7 [next](#)

**Current color may be
different than color stated.*

Access to Interactive Vehicle,
Title, and Registration
inquiries is governed by the
Federal Driver's Privacy
Protection Act of 2000
(DPPA).

VIN#: (b)(6), (b)(7)(C)
Plate: (b)(6), (b)(7)(C)
Issued: 2006
Expired: 12/31/2010
Class: Private Passenger Car

Commercial Vehicle: N
Type: Automobile
Make: (b)(6), (b)(7)(C)
Model: (b)(6), (b)(7)(C)
Style: (b)(6), (b)(7)(C)
Color*: (b)(6), (b)(7)(C)
Year: (b)(6), (b)(7)(C)
County: Davidson

Jointly Owned: N

(b)(6), (b)(7)(C)

Owner:

(b)(6), (b)(7)(C)

NASHVILLE TN 37211-0000

** Current color may be different than color stated.*

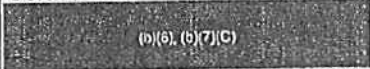
Deconfliction☐ Flag this Record

Lessor

Vehicle not leased

Lien

08/19/2006


(b) (6), (b) (7)(C)

NASHVILLE TN 37211-0000

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09:52

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM NCIC ON 10/06/10 AT 08:54:17

(b)(7)(E)

THIS (b)(7)(E) MULTIPLE RESPONSE IS THE
RESULT OF YOUR INQUIRY ON NAM/ (b)(7)(E) SEX/M RAC/W

DOB/ (b)(7)(E) PUR/C

NAME

FBI NO.

INQUIRY DATE

(b)(7)(E)

(b)(7)(E)

2010/10/06

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

M W (b)(7)(E) N

BIRTH PLACE

UNLISTED CNTRY

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

A

B/B

No-photo

Possible

3 - Poss. matches
2 - ICE - Fugitives
(matches)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(q)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(q) ON 10/06/10 AT 08:54:17

(b)(7)(q)

THIS (b)(7)(q) MULTIPLE RESPONSE IS THE
RESULT OF YOUR INQUIRY ON NAM (b)(7)(q) SEX/M RAC/W

DOB/ (b)(7)(q) (b)(7)(q) PUR/C

NAME (b)(7)(q) (b)(7)(q) FBI NO. INQUIRY DATE

(b)(7)(q) (b)(7)(q) (b)(7)(q) 2010/10/06

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M W (b)(7)(q) (b)(7)(q) N

BIRTH PLACE
UNLISTED CNTRY

MESSAGE IS DISPLAYED.

(b)(7)(q)

FIRST PAGE OF MESSAGE

(b)(7)(q)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 02 *****
FINGERPRINT CLASS PATTERN CLASS

(b)(7)(E) (b)(7)(E) (b)(7)(E)

MISC NUMBERS

AR: (b)(7)(E) (b)(7)(E)

-B/B

IDENTIFICATION DATA UPDATED 1999/03/02

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

FBI - FBI (b)(7)(E) (b)(7)(E) (b)(7)(E)

END - 1ST (b)(7)(E) RECORD FOR MULTIPLE RESPONSE
MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(D)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

NAME

FBI NO.

INQUIRY DATE

2010/10/06

(b)(7)(D) (b)(7)(D)

(b)(7)(D) (b)(7)(D) (b)(7)(D)

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

M W

(b)(7)(D) (b)(7)(D)

N

BIRTH PLACE

MEXICO

FINGERPRINT CLASS

PATTERN CLASS

(b)(7)(D) (b)(7)(D) (b)(7)(D)

MESSAGE IS DISPLAYED.

(b)(7)(D)

(b)(7)(D)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

ALIAS NAMES

(b)(7)(E)

OTHER
BIRTH DATES

(b)(7)(E)

MESSAGE IS DISPLAYED.

(b)(7)(E)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 05 *****

(b)(7)(E)

IDENTIFICATION DATA UPDATED 2006/04/17

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

CALIFORNIA - STATE ID (b)(7)(E)
WASHINGTON STA - STATE ID (b)(7)(E)

END - 2ND (b)(7)(E) RECORD FOR MULTIPLE RESPONSE

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 06 *****

NAME

FBI NO.

INQUIRY DATE

(b)(7)(E)

(b)(7)(E)

2010/10/06

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

M W

(b)(7)(E)

Y

BIRTH PLACE

HONDURAS

FINGERPRINT CLASS

PATTERN CLASS

(b)(7)(E)

SCARS-MARKS-

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 07 *****

MISC NUMBERS

(b)(7)(E)

AR- (b)(7)(E)

IDENTIFICATION DATA UPDATED 2004/12/18

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

FBI - FBI (b)(7)(E)

END - LAST (b)(7)(E) RECORD FOR MULTIPLE RESPONSE

THE RECORD(S) CAN BE OBTAINED THROUGH THE (b)(7)(E)
(b)(7)(E) BY USING THE APPROPRIATE (b)(7)(E) TRANSACTION.

END
MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

09:53

TECS II. EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:
MSG STATUS:

(b)(7)
(E)

***** TEXT OF MESSAGE ***** PAGE 07 *****

MISC NUMBERS

AR- (b)(7)(E)

IDENTIFICATION DATA UPDATED 2004/12/18

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

FBI - FBI, (b)(7)(E)

END - LAST (b)(7)(E) RECORD FOR MULTIPLE RESPONSE

THE RECORD(S) CAN BE OBTAINED THROUGH THE (b)(7)(E)
(b)(7)(E) BY USING THE APPROPRIATE (b)(7)(E) TRANSACTION.

END
MESSAGE IS DISPLAYED. (b)(7)(E)

END OF THIS MESSAGE
(b)(7)(E)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

ICE Fugitive 05/13

(b)(7)(C)

(b)(7)(C)

A

(b)(7)(C)

(b)(7)(C)

Honduras

Event/213 | Alerts | Aliases | Addresses | Phone Numbers | Scars, Marks, Tattoos | Relatives | Misc. Numbers | Employment | Detainers | Attorneys / Representatives

[Print](#)

Encounters

Encounters for Case # 611101 Please select an Encounter to view detailed information.

	Subject ID	A-Number	Last Name	First Name	COB	Age	Entry Date	Apprehend	Processing Disposition	Unlink
▶	(b)(1)(c) (b)(7)(c)	(b)(1)(c) (b)(7)(c)	(b)(1)(c) (b)(7)(c)		Honduras	43	12/13/2004	12/15/2004	Warrant of Arrest/Notice to Appear	Unlink from Person
A-Number: (b)(1)(c) (b)(7)(c) Subject ID: (b)(1)(c) (b)(7)(c) Name: (b)(1)(c) (b)(7)(c) Add New										
Distinguishing Characteristics (Scars, Marks, Tattoos)										
Type	Characteristic				Description					
Scar	(b)(1)(c) (b)(7)(c)								Edit	Delete

(b)(1)(c) (b)(7)(c)

— B/B — ICE Fugitive

15 5/5/05

A

(b)(1)(c) (b)(7)(c)

(b)(1)(c)

10/6/2010

10:29

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

PAGE 01 *****

***** TEXT OF MESSAGE *****

FROM (b)(7)(E) ON 10/06/10 AT 10:27:21

(b)(7)(E)

THIS (b)(7)(E) MULTIPLE RESPONSE IS THE
RESULT OF YOUR INQUIRY ON NAM/ (b)(7)(E) SEX/M RAC/W DOB/ (b)(7)(E)

PUR/C

NAME

FBI NO.

INQUIRY DATE

2010/10/06

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

M W (b)(7)(E) N

BIRTH PLACE

MEXICO

MESSAGE IS DISPLAYED. (b)(7)(E)

FIRST PAGE OF MESSAGE (b)(7)(E)

Poss.ble

(b)(7)(E)

(b)(7)(E)

- AGG Felon Prison deport

A

(b)(7)(E)

- No photo in EArim
- photo from file
- ✶ Compare
mex consulate ID

10:29

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

PAGE 02 *****

***** TEXT OF MESSAGE *****
FINGERPRINT CLASS PATTERN CLASS

(b)(7)(E)

ALIAS NAMES

(b)(7)(E) (b)(7)(E)

OTHER SCARS-MARKS-

BIRTH DATES (b)(7)(E) (b)(7)(E) MISC NUMBERS

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:29

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 03 *****

AR- (b)(7)(E) (b)(7)(E)

(b)(7)(E) (b)(7)(E)

IDENTIFICATION DATA UPDATED 2005/07/07

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

CALIFORNIA - STATE ID/ (b)(7)(E) (b)(7)(E)
FBI - FBI/ (b)(7)(E) (b)(7)(E) (b)(7)(E)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 10/06/10 AT 10:31:51

CR (b)(7)(E)
07:31 10/06/2010 32504
07:31 10/06/2010 89161 (b)(7)(E)

(b)(7)(E)

TXT

HDR (b)(7)(E)

ATN/ (b)(7)(E) (b)(7)(E)

***** CRIMINAL HISTORY RECORD *****

Data As Of 2010-10-06

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number (b)(7)(E) (b)(7)(E) (b)(7)(E)

MESSAGE IS DISPLAYED.

FIRST PAGE OF MESSAGE

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

Request Id

(b)(7)c

Purpose Code

C

Attention

(b)(6), (b)(7)(C)

The information in this rap sheet is subject to the following caveats:

This record is based only on the FBI number in your request- (b)(6), (b)(7)(C), (b)(7)c

Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. (US; 2010-10-06)

All arrest entries contained in this FBI record are based on fingerprint comparisons and pertain to the same individual. (US; 2010-10-06)

The use of this record is regulated by law. It is provided for official use only and may be used only for the purpose requested. (US; 2010-10-06)

***** IDENTIFICATION *****

Subject Name(s)

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

(b)(7)(E)

Subject Description

FBI Number

State Id Number

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:
MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

(b)(7)(E) (CA)

Miscellaneous Numbers

(b)(7)(E)	Alien Registration	Unknown
Sex	Race	
Male	White	
Height	Weight	Date of Birth

(b)(7)(E)

(b)(7)(E)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 05 *****

Hair Color

Eye Color

Fingerprint Pattern

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), (b)(7)e

(b)(6), (b)(7)(C), (b)(7)e

Scars, Marks, and Tattoos

Code Description, Comments, and Images

(b)(6), (b)(7)(C)

Place of Birth

Citizenship

MM

US

Fingerprint Images

Photo Images

Photo Image Available

ICE DUBLIN

(b)(7)e

Available Image

Other

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(e)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

PAGE 06 *****

***** TEXT OF MESSAGE *****

(No Photo Image Transmitted

Comment: Arresting agency has photo associated
with arrest date of 1995/06/13)

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Earliest Event Date 1995-06-13

Arrest Date 1995-06-13

Arrest Case Number (b)(6), (b)(7)(C)

Arresting Agency (b)(7)(e) ICE DUBLIN

Subject's Name (b)(6), (b)(7)(C)

Charge 01

Charge Literal ILLEG ENT US ARR BAKERSFIELD BORDER PATROL

Agency (b)(7)(e) ICE DUBLIN

Severity

MESSAGE IS DISPLAYED.

(b)(7)(e)

(b)(7)(e)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(e)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 07 *****

===== Cycle 002 =====
Earliest Event Date 1997-02-11

Arrest Date 1997-02-11
Arrest Case Number (b)(6), (b)(7)(C)
Arresting Agency (b)(7)(e) USINS SAN FRANCISCO
Subject's Name (b)(6), (b)(7)(C)
Charge 01
Charge Literal DEPORT PROC
Agency (b)(7)(e) USINS SAN FRANCISCO
Severity

===== Cycle 003 =====
Earliest Event Date 2000-02-28

Arrest Date 2000-02-28

MESSAGE IS DISPLAYED.

(b)(7)(e)

(b)(7)(e)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 08 *****

Arrest Case Number

(b)(6), (b)(7)(C)

Arresting Agency

(b)(7)e

USINS-CLPTR ST PRIS CALIPATRIA

Subject's Name

(b)(6), (b)(7)(C)

Charge

01

Charge Literal 8 USC 1251 R2A3 IRP REMOVAL AGG. FELON ROBBERY

Agency (b)(7)e USINS-CLPTR ST PRIS CALIPATRIA

Severity

Court Disposition

(Cycle 003)

Court Agency

Unknown

Charge

01

Charge Literal 8 USC 1251 R2A3 IRP REMOVAL AGG. FELON ROBBERY

Severity

Disposition (Other ; REMOVED MAY 25 2005 VIA POE AFOOT
CALEXICO CA)

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 09 *****
***** INDEX OF AGENCIES *****

Agency
Address

FBI-CJIS DIV-CLRKSGB CLARKSBURG; (b)(7)(E)

1000 CUSTER HOLLOW RD
CLARKSBURG, WV 26306

Agency
Address

ICE DUBLIN; (b)(7)(E)

6102 NINTH ST
DUBLIN, CA 94568

Agency
Address

USINS SAN FRANCISCO; (b)(7)(E)

630 SANSOME ST
SAN FRANCISCO, CA 941112280

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(D)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 10 *****

Agency
Address

USINS-CLPTR ST PRIS CALIPATRIA;

(b)(7)(D)

7018 BLAIR RD PO BOX 5001
CALIPATRIA, CA 922335001

* * * END OF RECORD * * *

MESSAGE IS DISPLAYED.

(b)(7)(D)

END OF THIS MESSAGE

(b)(7)(D)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 10/06/10 AT 10:31:51

CR. (b)(7)(E)

07:31 10/06/2010 35252

07:31 10/06/2010 89164 (b)(7)(E)

* (b)(7)(E)

TXT

HDR (b)(7)(E)

ATN (b)(7)(E)

THE FOLLOWING RECORD PERTAINS TO FBI (b)(7)(E) (b)(7)(E) (b)(7)(E)
SID (b)(7)(E) (b)(7)(E)

RESTRICTED - DO NOT USE FOR EMPLOYMENT, LICENSING, PLACEMENT OR
CERTIFICATION PURPOSES

MESSAGE IS DISPLAYED. (b)(7)(E)
(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 02 *****

DO NOT COLLECT DNA. DNA SAMPLE HAS BEEN RECEIVED,
TYPED, AND UPLOADED INTO THE CAL-DNA DATA BANK.
FOR INFO (510) 620- (b)(7)(E) *****

** PALM PRINTS AVAILABLE AT DOJ FOR PALM PRINTS CONTACT

(b)(7)(E)
** III MULTIPLE SOURCE

CII (b)(7)(E) (b)(7)(E)
DOB (b)(7)(E) SEX/M RAC/HISPANIC
HGT (b)(7)(E) WGT (b)(7)(E) EYE (b)(7)(E) HAI (b)(7)(E) POB/MM
NAM/01 (b)(7)(E)
02 (b)(7)(E) (b)(7)(E)
03 (b)(7)(E)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

04
05
06
07
08
09
10
11
12
13
14

(b)(7)(E)

MNU/FBI- (b)(7)(E)

DOB-

(b)(7)(E)

INN-CDC-

(b)(7)(E)

CDC-

(b)(7)(E)

MESSAGE IS DISPLAYED.

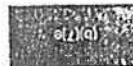
(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010



QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

19930505 CAPDMONTEREY PARK

DOB: (b)(7)(E) (b)(7)(E)

01:496 (A) PC-RECEIVE/ETC KNOWN STOLEN PROPERTY
DISPO:RELEASED/DETENTION ONLY

19931224 CASOLOS ANGELES

DOB: (b)(7)(E) (b)(7)(E)

01:459 PC-BURGLARY

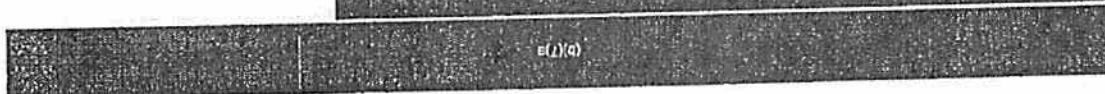
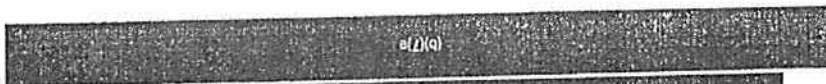
02:148.9 PC-FALSE IDENTIFICATION TO PEACE OFFICER

19940216 CASOLOS ANGELES

DOB: (b)(7)(E) (b)(7)(E)

01:459 PC-BURGLARY

MESSAGE IS DISPLAYED.



10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 05 *****

19940406 CASOLOS ANGELES

DOB: (b)(7)(E)

01:11350 (A) HS-POSSESS NARC CONTROL SUBSTANCE

19940527 CASOLOS ANGELES CENTRAL

01:11350 (A) HS-POSSESS NARC CONTROL SUBSTANCE

*DISPO: CONVICTED COMMITTED TO PRISON

CONV STATUS: FELONY

SEN: 002 YEARS PRISON

19940801 CASDCORRECTIONS

(b)(7)(E)

01:11350 (A) HS-POSSESS NARC CONTROL SUBSTANCE

19940823 CASDCORRECTIONS

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 06 *****

(b)(7)(E)

01:459 PC-BURGLARY:FIRST DEGREE

19950808 CASOLOS ANGELES

DOB: (b)(7)(E)

(b)(7)(E)

01:470(A) PC-FORGERY

19960410 CASCEAST LOS ANGELES

(b)(7)(E)

01:529.5 PC-MFG/ETC DECEPTIVE GOVERNMENT ID/ETC

*DISPO:CONVICTED-PROB/JAIL

CONV STATUS:MISDEMEANOR

02:148.9 PC-FALSE IDENTIFICATION TO PEACE OFFICER

*DISPO:CONVICTED-PROB/JAIL

CONV STATUS:MISDEMEANOR

SEN: 024 MONTHS PROBATION , 060 DAYS JAIL ,

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 07 *****

IMP SEN SS

19951027 CASOLOS ANGELES

DOB: (b)(7)(E)

(b)(7)(E)

01:ATTEMPTED

459 PC-BURGLARY

19951129 CASDCORRECTIONS

(b)(7)(E)

01:VIOLATION OF PAROLE

TO FINISH TERM

19960707 CASOLOS ANGELES

DOB: (b)(7)(E)

(b)(7)(E)

01:459 PC-BURGLARY

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 08 *****

19960802 CASDCORRECTIONS

(b)(7)(E)

01:VIOLATION OF PAROLE
TO FINISH TERM

20000211 CAPDLA METRO JAIL

DOB: (b)(7)(E)

(b)(7)(E)

01:459 PC-BURGLARY

20000228 CASCLOS ANGELES CENTRAL

(b)(7)(E)

01:148.9(A) PC-FALSE ID TO SPECIFIC PEACE OFFICERS
DISPO:DISMISSED/FOJ/PLEA TO OTHER CHARGE

02:459 PC-BURGLARY
DISPO:DISMISSED/FOJ/PLEA TO OTHER CHARGE

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:32

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 09 *****

03:211 PC-ROBBERY

*DISPO: CONVICTED COMMITTED TO PRISON

CONV STATUS: FELONY

SEN: 006 YEARS PRISON

20000403 CASDCORR DELANO

(b)(7)(E)

01:212.5 (A) PC-ROB: 1ST DEG: CAB/ETC/INHAB DWELL

20020125 CASORIVERSIDE

DOB: (b)(7)(E)

(b)(7)(E)

01: BENCH WARRANT

2621 PC-PRISONER: MATERIAL WITNESS

WANTS NOT CHECKED - PLEASE CHECK (b)(7)(E)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

10:33

TECS II EXTERNAL MESSAGE DISPLAY

10062010

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 10/06/10 AT 10:31:53

(b)(7)(E)
THIS (b)(7)(E) RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/ (b)(7)(E) INDIVIDUAL'S RECORD WILL BE
COMPLETE WHEN ALL RESPONSES ARE RECEIVED FROM THE FOLLOWING SOURCES:
FBI - FBI/ (b)(7)(E)
CALIFORNIA - STATE ID/ (b)(7)(E)
END

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:26

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/02/10 AT 14:26:27

RR. (b)(7)(E)

11:26 09/02/2010 37793

11:26 09/02/2010 87399 (b)(7)(E)

TXT
LIC/ (b)(7)(E) (b)(7)(E) VIN/ (b)(7)(E) (b)(7)(E) MAKE/ (b)(7)(E) (b)(7)(E) YR/ (b)(7)(E) (b)(7)(E) EXP/20110228
TITLE (b)(7)(E) (b)(7)(E) MODEL (b)(7)(E) (b)(7)(E) BODY/ (b)(7)(E) (b)(7)(E) VCO/ (b)(7)(E) (b)(7)(E)
OWNER (b)(7)(E) (b)(7)(E) CO-OF-REG/CHEATHAM

ADDR/ (b)(7)(E) (b)(7)(E) WT/ 000000000
PEGRAM TN 37143 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

(b)(7)(E) (b)(7)(E)

24/7 Search and Technical Assistance 1-866-
277-0779CONTACT US | LIVE CHAT | HELP | SIGN OUT
MAIN MENU | CLASSIC VIEW | PRINT |

My Accurint People Business Assets Licenses Courts Phones Healthcare AI

Motor Vehicles Property (Property Assessments, Deeds & Mortgages) MVR Wildcard Search More Searches ▾

Last Name First Name Middle Name SSN
[] [] [] []Company Name
[]Street Address City State Zip
[] [] [] []VIN Tag Number License Number
[] (b)(6), (b)(7)(C) []Include similar sounding names ☐ ☐

Reference: []

Coverage | Help?

Important: The Pub
available data source
Data is sometimes e
Incorrectly and is ge
MoreNote: Not all of the
search results is der
Some information m
additional sources.Vehicle Registrations Search Results
Search Terms Used - State: TN; Tag Number: (b)(6), (b)(7)(C)

Records: 1 to 1 of 1

Edit Search New Search Print Results Export to Excel

All

Vehicle Information

Reports

1. Description	VIN	Motor Vehicle Report
State of Origin: TENNESSEE	(b)(6), (b)(7)(C)	
Registrant(s):		
Name: (b)(6), (b)(7)(C)	Tag Number: (b)(6), (b)(7)(C)	
Address: (b)(6), (b)(7)(C) NASHVILLE	Issue State: TENNESSEE	
TN 37217-1842	Earliest Registration	
	Date: 07/10/2007	
	Latest Registration	
	Date: 07/31/2008	
	Record Type: HISTORICAL	
	Previous Tag Number: (b)(6), (b)(7)(C)	
	Previous Issue State:	
	TENNESSEE	

Records: 1 to 1 of 1

Edit Search New Search Print Results Export to Excel

Your DPPA Permissible Use: Court, Law Enforcement or Government Agencies
Your GLBA Permissible Use: Law Enforcement Purposes

10/6/2010

All-Database Search Results:

TOP (0)

TWP (0)

1 of 1 potential match for (b)(6), (b)(7)(C) All"

(b)(6), (b)(7)(C)

1 of 1

**Current color may be
different than color stated.*

Access to Interactive Vehicle,
Title, and Registration
inquiries is governed by the
Federal Driver's Privacy
Protection Act of 2000
(DPPA).

VIN#:

(b)(6), (b)(7)(C)

Plate:

(b)(6), (b)(7)(C)

Issued:

2006

Expired:

02/28/2011

Class:

Private Passenger Car

Commercial
Vehicle:

N

Type:

Make:

Model:

Style:

Color:*

Year:

County:

Cheatham

Jointly Owned:

N

Owner:

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

PEGRAM TN 37143-0000

** Current color may be different than color stated.*

Deconfliction

☐ Flag this Record

Lessor

Vehicle not leased

Lien

04/17/2007

(b)(6) (b)(7)(C)

ANTIOCH TN 37013-0000

For added privacy, log off and close your browser window when you are finished using this service.
This page accessed 10.6.2010 9:46AM
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24/7 Search and Technical Assistance 1-866-

277- (b)(7)(C)

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My Accurant People Business Assets Licenses Courts Phones Healthcare AV

Advanced Person Person People At Work Death Records More Searches ▾

Last Name	First Name	Middle Name	SSN
(b)(6), (b)(7)(C)			
☐ Include name variations			
Street Address	City	State	Zip
		TN	
County	Radius		
Phone	DOB	Age Range	
Reference: 1			

Coverage | Help?

Important: The Pul available data source Data is sometimes e incorrectly and is ge More

Person Search Results

Records: 1 to 2 of 2

Search Terms Used - Last Name: (b)(6), (b)(7)(C) ; First Name: (b)(6), (b)(7)(C) State: TN;

Edit Search New Search Print Results Export to Excel

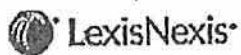
All	Full Name	SSN	Address	Phone	Next Steps
1.	(b)(6), (b)(7)(C) Gender: Male	*View Sources (~1)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1232 May 10	615-582-(b)(6)	Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurant Reports can assist you: See Examples
2.	(b)(6), (b)(7)(C) Gender: Male	*View Sources (~1)	(b)(6), (b)(7)(C) NASHVILLE TN 37217-1842 Apr 07		Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurant Reports can assist you: See Examples

Records: 1 to 2 of 2

Edit Search New Search Print Results Export to Excel

10/6/2010

Your DPPA Permissible Use: Court, Law Enforcement or Government Agencies
Your GLBA Permissible Use: Law Enforcement Purposes



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10/6/2010

(b)(7)(D)

Important: The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

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Your DPPA Permissible Use: Court, Law Enforcement, or Government Agencies
Your GLBA Permissible Use: Law Enforcement Purposes

Law Enforcement Report

Date: 10/06/10

Reference Code: 1

Report processed by:

DHS ICE DRO Fugitive Operations Support Center
500 12 Street SW
Washington, DC 20236
202-282-8000 Main Phone

Report Legend:

§ - Shared Address

D - Deceased

✓ - Probable Current Address

Subject Information: (Best Information for Subject)

Name: (b)(6), (b)(7)(C)

SSN:

Age:

Others Associated With Subjects SSN:

(DOES NOT usually indicate any type of fraud or deception)

[None Found]

Address Summary: View All Address Variation Sources

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1232, DAVIDSON COUNTY (May 2010)
NASHVILLE TN 37217-1842, DAVIDSON COUNTY (Apr 2007)

Previous And Non-Verified Address(es): View All Address Variation Sources

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1232, DAVIDSON COUNTY (May 2010)
Name Associated with Address:

(b)(6), (b)(7)(C)
Property Ownership Information for this Address

Property:

Parcel Number -

Name Owner : TRITEX R & E ADVISORS INC

Property Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226, DAVIDSON COUNTY

Owner Address: (b)(6), (b)(7)(C) ATLANTA GA 30326-1156, FULTON

COUNTY

Name of Seller : FBT OF TENNESSEE INC

Data Source - A

Neighborhood Profile (2000 Census)

Average Age: 32

Median Household Income: \$28,942

Median Owner Occupied Home Value: \$77,100

Average Years of Education: 11

(b)(6), (b)(7)(C) NASHVILLE TN 37217-1842, DAVIDSON COUNTY (Apr 2007)
Name Associated with Address:

(b)(6), (b)(7)(C)
Neighborhood Profile (2000 Census)
Average Age: 32

10/6/2010

Median Household Income: \$28,942
Median Owner Occupied Home Value: \$77,100
Average Years of Education: 11

 **Phones Plus(s):**
[None Found]

 **Possible Criminal Records:**
[None Found]

 **Sexual Offenses:**
[None Found]

 **Driver's License Information:**
[None Found]

 **Motor Vehicles Registered To Subject:**

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 262 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Standard
Power Steering: Standard
Power Brakes: Standard
Power Windows: Optional
Security System: Unknown
Roof: None / not available
Price: 23252
Radio: AM/FM Cassette
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Optional

Registrant(s)

Record Type: HISTORICAL
Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1842, DAVIDSON COUNTY
Sex: Male
Tag Number: (b)(6), (b)(7)(C)
Earliest Registration Date: 4/19/2007
Latest Registration Date: 4/19/2007
Expiration Date: 4/30/2008
License Plate Type: Private

Vehicle:

Description: (b)(6), (b)(7)(C)
VIN: (b)(6), (b)(7)(C)
State Of Origin: TENNESSEE
Engine: 6 Cylinder 262 Cubic Inch
Anti Lock Brakes: 4 wheel standard
Air Conditioning: Standard
Daytime Running Lights: Standard
Power Steering: Standard
Power Brakes: Standard
Power Windows: Optional
Security System: Unknown
Roof: None / not available
Price: 23252
Radio: AM/FM Cassette
Front Wheel Drive: No
Four Wheel Drive: No
Tilt Wheel: Optional

10/6/2010

(b)(7)(C)

Owner(s)

Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1842, DAVIDSON COUNTY
Sex: Male
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 4/19/2007

Lien Holder(s)
None

 **Florida Accidents:**
[None Found]

 **Concealed Weapons Permit:**
[None Found]

 **People at Work:**
[None Found]

 **Professional License(s):**
[None Found]

 **FAA Certifications:**
[None Found]

 **FAA Aircrafts:**
[None Found]

 **Watercraft:**
[None Found]

 **Voter Registration:**
[None Found]

 **Hunting/Fishing Permit:**
[None Found]

 **Liens and Judgments:**
[None Found]

 **UCC Filings:**
[None Found]

 **Possible Properties Owned by Subject:**
[None Found]

 **Possible Associates:**
[None Found]

 **Possible Relatives:**
[None Found]

10/6/2010

 Neighbors:

Neighborhood:
 (b)(6), (b)(7)(C) NASHVILLE TN 37217-1232, DAVIDSON COUNTY (May 2010)

Address(es):

Aug 2010) (b)(6), (b)(7)(C) NASHVILLE TN 37217-1248, DAVIDSON COUNTY (Apr 2004 -
 (b)(6), (b)(7)(C) Age:
 (b)(6), (b)(7)(C) Issued in California between 1/1/1970 and 12/31/1970
 (b)(6), (b)(7)(C) NASHVILLE TN 37217-1248, DAVIDSON COUNTY (Sep 2004 -
 Aug 2010) (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C) Age: 28
 (b)(6), (b)(7)(C) NASHVILLE TN 37217-1248, DAVIDSON COUNTY (Nov 2005 -
 Aug 2010)

Residents:

(b)(6), (b)(7)(C) Age:
 (b)(6), (b)(7)(C) Issued in Texas between 1/1/1975 and 12/31/1975
 (b)(6), (b)(7)(C) Age:
 (b)(6), (b)(7)(C) Issued in Puerto Rico between 1/1/1978 and 12/31/1979

Source Information:

All Sources
 Motor Vehicle Registrations
 Utility Locator

5 Source Document(s)
 2 Source Document(s)
 3 Source Document(s)

10/6/2010

10:57

TECS II EXTERNAL MESSAGE DISPLAY

10062010

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM NCIC ON 10/06/10 AT 10:57:36

THIS (b)(7)(C) MULTIPLE RESPONSE IS THE
RESULT OF YOUR INQUIRY ON NAM/ (b)(7)(C) SEX/M RAC/W
DOB/ (b)(7)(C) PUR/C
NAME (b)(7)(C) FBI NO. INQUIRY DATE
(b)(7)(C) 2010/10/06

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M W (b)(7)(C) N

BIRTH PLACE
MEXICO

MESSAGE IS DISPLAYED. (b)(7)(C)

FIRST PAGE OF MESSAGE
(b)(7)(C)

10:58

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)E

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 02 *****
FINGERPRINT CLASS PATTERN CLASS

(b)(6), (b)(7)E

ALIAS NAMES

(b)(6), (b)(7)E

IDENTIFICATION DATA UPDATED 2009/06/09

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

TENNESSEE - STATE ID (b)(6), (b)(7)E

END - (b)(7)E RECORD FOR MULTIPLE RESPONSE
MESSAGE IS DISPLAYED. (b)(7)E

(b)(7)E

11:00

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)c ON 10/06/10 AT 10:58:51

CR. (b)(7)c

07:58 10/06/2010 60084

07:58 10/06/2010 94930 (b)(6), (b)(7)c

* (b)(5), (b)(7)c

TXT

HDR/ (b)(7)c

ATN/ (b)(6), (b)(7)c

***** CRIMINAL HISTORY RECORD *****

Data As Of 2010-10-06

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number

(b)(6), (b)(7)c

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

11:00

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

State Id Number (b)(6), (b)(7) ()

Purpose Code C

Attention (b)(6), (b)(7)

The information in this rap sheet is subject to the following caveats:
THIS RECORD IS BASED ONLY ON THE SID OR FBI NUMBER IN YOUR REQUEST ((b)(6), (b)(7)) BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A
NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. USE OF THE
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EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY
WITH THE AGENCY THAT CONTRIBUTED THE FINGERPRINTS. (TBI; 2005-06-28)

***** IDENTIFICATION *****

Subject Name(s)

(b)(6), (b)(7)

(AKA)

MESSAGE IS DISPLAYED.

(b)(7)

(b)(7)

11:00

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(D)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

(b)(6), (b)(7)(C) (AKA)

Subject Description

FBI Number

State Id Number

(b)(6), (b)(7)(C)

Sex

Race

Skin Tone

Male

White

Unknown

Height

Weight

Date of Birth

Hair Color

Eye Color

Place of Birth

MM

MM

MM

Residence

Residence as of

2009-06-01

MESSAGE IS DISPLAYED.

(b)(7)(D)

(b)(7)(D)

11:00

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

(b)(6), (b)(7)(C)

PEGRAM, TN

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Tracking Number

(b)(6), (b)(7)(C)

Earliest Event Date

2009-05-11 Incident Date

2009-05-11

Arrest Date

2009-05-11

Arrest Case Number

(b)(7)(C)

Arresting Agency

METROPOLITAN NASHVILLE PD

Subject's Name

Offender Id Number

Charge

(b)(6), (b)(7)(C)

Charge Number

Charge Tracking Number

MESSAGE IS DISPLAYED.

(b)(7)(C)

(b)(7)(C)

11:00

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(6), (b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 05 *****

Charge Literal LICENSE, DRIVERS LICENSE REQUIRED
Counts 1
Severity UNKNOWN

Court Disposition (Cycle 001)
Court Case Number (b)(6), (b)(7)c
Court Agency (b)(7)c METROPOLITAN NASHVILLE PD
Subject's Name
Charge (b)(6), (b)(7)c
Charge Number
Charge Tracking Number
Charge Literal LIC, DRIVER LIC REQ
Charge Description MISDEMEANOR
Counts 1
Severity MISDEMEANOR

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

11:00

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 06 *****

Disposition GUILTY PLEA - AS CHARGED(2009-06-01;
DISPOSITION GUILTY FINE \$50.00 COST \$181.50
SUSPENDED=N)

***** INDEX OF AGENCIES *****

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

Agency METROPOLITAN NASHVILLE PD;

*** END OF RECORD ***

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

10:58

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)(c)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

NAME

FBI NO.

INQUIRY DATE

2010/10/06

(b)(6), (b)(7)(c)

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

(b)(6), (b)(7)(c)

BIRTH PLACE
MEXICO

FINGERPRINT CLASS PATTERN CLASS

(b)(6), (b)(7)(c)

MESSAGE IS DISPLAYED.

(b)(7)(c)

(b)(7)(c)

*Life in
Prison*

10:58

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 04 *****

ALIAS NAMES

(b)(6), (b)(7)C

OTHER

BIRTH DATES SOCIAL SECURITY

(b)(6), (b)(7)C

IDENTIFICATION DATA UPDATED 1999/02/26

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

CALIFORNIA - STATE ID/ (b)(6), (b)(7)C

END - (b)(7)C RECORD FOR MULTIPLE RESPONSE
MESSAGE IS DISPLAYED.

(b)(7)D

(b)(7)C

10:58

TECS II EXTERNAL MESSAGE DISPLAY

10062010

(b)(7)s

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)
(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 05 *****

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE (b)(7)s TRANSACTION.

END

MESSAGE IS DISPLAYED.

(b)(7)s

(b)(7)s

(b)(3), (b)(7)c

bldgs deceased one

4/21/96

(b)(6), (b)(7)c

(b)(6), (b)(7)c

- 1/10

(Pss. 612)

(b)(6), (b)(7)c

(b)(6), (b)(7)c

- 6/1-09

(b)(6), (b)(7)c

(b)(6), (b)(7)c

- 5/10

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

1-1-81

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

1/24/96

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

(b)(6), (b)(7)c

4-10-82

(b)(6), (b)(7)c

- 6/23/82



(b)(6), (b)(7)(c)

(b) (6), (b) (7) c

(b) (6), (b) (7)

(b) (6), (b) (7)

(b) (6), (b) (7)

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE *****

PAGE 03 *****

TENNESSEE - STATE ID/ (b)(6), (b)(7)C

END - (b)(7)D RECORD FOR MULTIPLE RESPONSE

NAME

FBI NO.

INQUIRY DATE

2010/10/05

(b)(6), (b)(7)C

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

(b)(6), (b)(7)C

BIRTH PLACE
MEXICO

FINGERPRINT CLASS

PATTERN CLASS

(b)(6), (b)(7)C

MESSAGE IS DISPLAYED.

(b)(7)D

(b)(7)D

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:
MSG STATUS:

(b)(7)
(E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

(b)(6), (b)(7)c

ALIAS NAMES

(b)(6), (b)(7)c

SCARS-MARKS-
TATTOOS

(b)(6), (b)(7)c

IDENTIFICATION DATA UPDATED 2008/07/11

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

MISSOURI - STATE ID/ (b)(6), (b)(7)c
MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE *****

** PAGE 05 *****

FBI

- FBI/ (b)(6), (b)(7)e

END - (b)(7)e RECORD FOR MULTIPLE RESPONSE

NAME

FBI NO.

INQUIRY DATE

2010/10/05

(b)(6), (b)(7)c

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

(b)(6), (b)(7)c

BIRTH PLACE

MAINE

FINGERPRINT CLASS

PATTERN CLASS

(b)(6), (b)(7)c

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)e

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE *****

PAGE 06 *****

(b)(6) (b)(7)c

ALIAS NAMES

(b)(6), (b)(7)c

OTHER SCARS-MARKS-
BIRTH DATES TATTOOS MISC NUMBERS

(b)(6), (b)(7)c

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

PAGE 09 *****

***** TEXT OF MESSAGE *****
ALIAS NAMES

(b)(6), (b)(7)(c)

OTHER SCARS-MARKS-
BIRTH DATES TATTOOS SOCIAL SECURITY MISC NUMBERS

(b)(6), (b)(7)(c)

MESSAGE IS DISPLAYED.

(b)(7)(c)

(b)(7)(c)

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

PAGE 01 *****

***** TEXT OF MESSAGE *****

FROM (b)(7) ON 10/05/10 AT 15:42:34

THIS (b)(7) RESPONSE IS THE

RESULT OF YOUR INQUIRY ON (b)(6), (b)(7)

PUR/C

NAME

FBI NO.

INQUIRY DATE

2010/10/05

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
(b)(6), (b)(7)

BIRTH PLACE

OKLAHOMA

MESSAGE IS DISPLAYED. (b)(7)

(b)(7)

15:50

TECS II EXTERNAL MESSAGE DISPLAY

10052010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

PAGE 02 *****

***** TEXT OF MESSAGE *****
FINGERPRINT CLASS PATTERN CLASS

(b)(5), (b)(7)c

ALIAS NAMES

(b)(6), (b)(7)c

SOCIAL SECURITY

(b)(6), (b)(7)c

IDENTIFICATION DATA UPDATED 2007/10/25

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

14:22

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)D ON 09/02/10 AT 14:19:13

RR. (b)(7)D

11:19 09/02/2010 37629

11:19 09/02/2010 85425

(b)(7)D

(b)(6), (b)(7)C

TEXT

LIC/

VIN/

(b)(6), (b)(7)C

MAKE/

(b)(6), (b)(7)C

TITLE

(b)(6), (b)(7)C

MODEL/

(b)(6), (b)(7)C

OWNER

(b)(6), (b)(7)C

ADDR/

(b)(6), (b)(7)C

WT/

000000000

NASHVILLE

TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)D

(b)(7)D

14:22

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

PAGE 01 *****

***** TEXT OF MESSAGE *****
FROM (b)(7)c ON 09/02/10 AT 14:19:06

RR (b)(7)c

11:19 09/02/2010 37627

11:19 09/02/2010 85380 (b)(7)c

* (b)(6), (b)(7)c

TXT

LIC/ (b)(6), (b)(7)c VIN/ (b)(6), (b)(7)c MAKE/ (b)(6), (b)(7)c

TITLE (b)(6), (b)(7)c MODEL/ (b)(6), (b)(7)c

OWNER/ (b)(6), (b)(7)c

ADDR/ (b)(6), (b)(7)c WT/ 000000000

NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

14:25

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)c

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

PAGE 01 *****

***** TEXT OF MESSAGE *****
FROM (b)(7)c ON 09/02/10 AT 14:21:16

RR. (b)(7)c

11:21 09/02/2010 37682

11:21 09/02/2010 86008 (b)(7)c

* (b)(7)c

TEXT

LIC/

VIN/ (b)(6), (b)(7)c

MAKE/

(b)(6), (b)(7)c

TITL (b)(6), (b)(7)c

MODEL/

(b)(6), (b)(7)c

OWNE

(b)(6), (b)(7)c

ADDR/

(b)(6), (b)(7)c

WT/

000000001

NASHVILLE

TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)c

(b)(7)c

09:52

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

PAGE 01 *****

***** TEXT OF MESSAGE *****
FROM (b)(7)e ON 09/30/10 AT 09:51:15

RR. (b)(7)e

06:51 09/30/2010 70821

06:51 09/30/2010 43829 (b)(7)e

* (b)(7)e

TXT

LIC/ (b)(6), (b)(7)c VIN/ (b)(6), (b)(7)c MAKE/ (b)(6), (b)(7)c

TITLE (b)(6), (b)(7)c MODEL/ (b)(6), (b)(7)c

OWNER/ (b)(6), (b)(7)c

ADDR/ (b)(6), (b)(7)c

WT/ 000000000

SPRING HILL TN 37174

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

09:52

TECS II EXTERNAL MESSAGE DISPLAY

09302010

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/30/10 AT 09:51:39

RR (b)(7)(E)

06:51 09/30/2010 70833

06:51 09/30/2010 43899 (b)(7)(E)

(b)(7)(E)

TXT

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20090930

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)

OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E) WT/ 000000000

NASHVILLE TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

09:53

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/30/10 AT 09:51:45

RR (b)(7)(E)

06:51 09/30/2010 70838

06:51 09/30/2010 43910 (b)(7)(E)

(b)(7)(E)

TXR

LIC/ (b)(7)(E) VIN/ (b)(7)(E) MAKE/ (b)(7)(E) YR/ (b)(7)(E) EXP/20110930

TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)

OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E)

WT/ 000000000

NASHVILLE

TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

09:53

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/30/10 AT 09:52:02

RR (b)(7)(E)

06:52 09/30/2010 70849

06:52 09/30/2010 43958 (b)(7)(E)

(b)(7)(E)

TEXT

LIC/(b)(7)(E) VIN/(b)(7)(E) MAKE/(b)(7)(E) YR/(b)(7)(E) EXP/20110131

TITLE/(b)(7)(E) MODEL/(b)(7)(E) BODY/(b)(7)(E) VCO/(b)(7)(E)

OWNER/(b)(7)(E) CO-OF-REG/CHEATHAM

ADDR/(b)(7)(E)

WT/ 000000000

ASHLAND CITY TN 37015

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

09:53

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:
MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/30/10 AT 09:52:08

RR. (b)(7)(E)

06:52 09/30/2010 70852

06:52 09/30/2010 43985 (b)(7)(E)

(b)(7)(E)

TXT
LIC. (b)(7)(E) VIN. (b)(7)(E) MAKE (b)(7)(E) YR. (b)(7)(E) EXP/20110531
TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO/ (b)(7)(E)
OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR. (b)(7)(E) WT/ 000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED. (b)(7)(E)

END OF THIS MESSAGE
(b)(7)(E)

24/7 Search and Technical Assistance 1-866-
277-(b)(7)(c)CONTACT US | LIVE CHAT | HELP | SIGN OUT
MAIN MENU | CLASSIC VIEW | PRINT |

My Accurant People Business Assets Licenses Courts Phones Healthcare

Motor Vehicles Property (Property Assessments, Deeds & Mortgages) MVR Wildcard Search More Searches ▾

Last Name	First Name	Middle Name	SSN
Company Name 			
Street Address	City	State	Zip
VIN	Tag Number	License Number	
Include similar sounding names ☐ ☐			
Reference:			

Coverage | Help?

Important: The Pub available data source Data is sometimes e incorrectly and is ge More

Note: Not all of the search results is der Some information m additional sources.

Vehicle Registrations Search Results

Records: 1 to 3 of 3

Search Terms Used - VIN Number: (b)(6), (b)(7)(C)

Edit Search New Search Print Results Export to Excel

All

Vehicle Information

Reports

1. Description: (b)(6), (b)(7)(C)	VIN: (b)(6), (b)(7)(C)	Motor Vehicle Report
State of Origin: TENNESSEE		
Registrant(s):		
Name: (b)(6), (b)(7)(C)		
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37207-5144		
Tag Number: (b)(6), (b)(7)(C)		
Issue State: TENNESSEE		
Earliest Registration Date: 03/17/2009		
Latest Registration Date: 03/17/2009		
Record Type: HISTORICAL		
Previous Tag Number: (b)(6), (b)(7)(C)		
Previous Issue State: ALABAMA		
2. Description: (b)(6), (b)(7)(C)	VIN: (b)(6), (b)(7)(C)	Motor Vehicle Report
State of Origin: TENNESSEE		
Owner(s):		
Name: (b)(6), (b)(7)(C)		
Address: (b)(6), (b)(7)(C) NASHVILLE TN 37207-5144		
Title Number: (b)(6), (b)(7)(C)		
Title Issue Date: 03/17/2009		
3. Description: (b)(6), (b)(7)(C)	VIN: (b)(6), (b)(7)(C)	Motor Vehicle Report
State of Origin: TENNESSEE		

9/7/2010

ICE ICE 2014-501A-01578 0005172

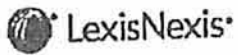
Vehicle Registrations Search

Owner(s):
Company Name: (b)(6), (b)(7)(C)
Address: (b)(6), (b)(7)(C) MADISON TN 37115-2430
Title Number: (b)(6), (b)(7)(C)
Title Issue Date: 02/10/2009

Records: 1 to 3 of 3

 Edit Search  New Search  Print Results  Export to Excel

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Your GLBA Permissible Use: Law Enforcement Purposes



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9/7/2010

ICE 2014-FOIA-01578-000518

24/7 Search and Technical Assistance 1-866-277 (b)(7)(e)

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My Accurant People Business Assets Licenses Courts Phones Healthcare

Motor Vehicles Property (Property Assessments, Deeds & Mortgages) MVR Wildcard Search More Searches ▾

Last Name	First Name	Middle Name	SSN
Company Name 			
Street Address	City	State	Zip
VIN	Tag Number	License Number	
Include similar sounding names ☐ ☐			
Reference:			

Coverage | Help?

Important: The Pul available data source Data is sometimes e incorrectly and is ge More

Note: Not all of the search results is der Some information m additional sources.

Vehicle Registrations Search Results

Records: 1 to 2 of 2

Search Terms Used - VIN Number: (b)(6), (b)(7)(C)

[Edit Search](#) [New Search](#) [Print Results](#) [Export to Excel](#)

All

Vehicle Information

Reports

1. Description: (b)(6), (b)(7)(C)	VIN: (b)(6), (b)(7)(C)	Motor Vehicle Report		
State of Origin: TENNESSEE				
Registrant(s):				
Name: (b)(6), (b)(7)(C)				
Address: (b)(6), (b)(7)(C) NASHVILLE				
TN 37211-3322				
Tag Number: (b)(6), (b)(7)(C)				
Issue State: TENNESSEE				
Earliest Registration Date: 08/30/2007				
Latest Registration Date: 08/30/2007				
Record Type: HISTORICAL				
Previous Tag Number: (b)(6), (b)(7)(C)				
Previous Issue State: GEORGIA				
2. Description: (b)(6), (b)(7)(C)			VIN: (b)(6), (b)(7)(C)	Motor Vehicle Report
State of Origin: TENNESSEE				
Owner(s):				
Name: (b)(6), (b)(7)(C)				
Address: (b)(6), (b)(7)(C) NASHVILLE				
TN 37211-3322				
Title Number: (b)(6), (b)(7)(C)				
Title Issue Date: 08/30/2007				

Records: 1 to 2 of 2

[Edit Search](#) [New Search](#) [Print Results](#) [Export to Excel](#)

9/7/2010

(b)(7)(e)

12:57

TECS II EXTERNAL MESSAGE DISPLAY

09132010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/13/10 AT 12:56:26

RR (b)(7)(E)

09:56 09/13/2010 01584

09:56 09/13/2010 20294 (b)(7)(E)

TXT

LIC (b)(7)(E)

VIN (b)(7)(E)

MAKE (b)(7)(E) YR/2001 EXP/20110731

TITLE (b)(7)(E)

MODEL (b)(7)(E)

BODY (b)(7)(E) VCO (b)(7)(E)

OWNER (b)(7)(E)

(b)(7)(E)

CO-OF-REG/DAVIDSON

ADDR (b)(7)(E)

WT/ 000000000

NASHVILLE

TN 37211

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

15:23

TECS II EXTERNAL MESSAGE DISPLAY

09212010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/21/10 AT 15:22:45

RR (b)(7)(E)

12:22 09/21/2010 30085

12:22 09/21/2010 34856 (b)(7)(E)

(b)(7)(E)

TXT

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20110731

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)

OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E) WT/ 000000000
NASHVILLE TN 37207 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

15:23

TECS II EXTERNAL MESSAGE DISPLAY

09212010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/21/10 AT 15:22:55

RR (b)(7)(E)

12:22 09/21/2010 30087

12:22 09/21/2010 34920 (b)(7)(E)

(b)(7)(E)

TEXT
LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20101231
TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)
OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E) WT/ 000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:09

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(C)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE *****
FROM: (b)(7)(C) ON 09/02/10 AT 14:09:05

RR (b)(7)(C)

11:09 09/02/2010 52657

11:09 09/02/2010 82576 (b)(7)(C)

(b)(7)(C)

TXT

N.C. VEHICLE REGISTRATION SYSTEM

RESPONSE BASED UPON:

PLATE NO: (b)(7)(C) YEAR: LIENS: PAGES: 7

ATTENTION:

VEHICLE DETAIL RESPONSE

VIN: (b)(7)(C) (b)(7)(C)

TITLE NO: (b)(7)(C) (b)(7)(C)

PURCHASE DT: 06302010

MP

MESSAGE IS DISPLAYED.

FIRST PAGE OF MESSAGE

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

Possible

FBI

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

NJ

(b)(7)(C) (b)(7)(C)

(b)(7)(C) (b)(7)(C)

14:09

TECS II EXTERNAL MESSAGE DISPLAY

09022010

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 02 *****

CUSTOMER ID:

(b)(1)(a)(g)(c)

DOB:

(b)(1)(a)(g)(c)

HANDICAP PLACARD:

PLACARD STATUS:

TAX COUNTY: MECKLENBURG

PLT STATUS: ACTIVE

CHARLOTTE

NC

28213-6670

CURRENT PLATE NO:

(b)(1)(a)(g)(c)

WGT:

ISSUE DT: 06302010 VALID THRU: 07152011

INS CO:

(b)(1)(a)(g)(c)

POLICY:

(b)(1)(a)(g)(c)

END OF MESSAGE

MESSAGE IS DISPLAYED.

(b)(1)(a)

END OF THIS MESSAGE

(b)(1)(a)

14:15

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)
(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 02 *****

THE AUTHORIZED PURPOSE FOR WHICH IT WAS GIVEN AND IT SHALL NOT BE
DISSEMINATED TO ANY UNAUTHORIZED PERSONS. TO ELIMINATE A POSSIBLE
DISSEMINATION VIOLATION, AND TO COMPLY WITH FUTURE EXPUNGEMENT ORDERS,
THIS RECORD SHALL BE DESTROYED *IMMEDIATELY* AFTER IT HAS SERVED ITS
INTENDED AND AUTHORIZED PURPOSES. ANY PERSON VIOLATING FEDERAL OR STATE
REGULATIONS GOVERNING ACCESS TO CRIMINAL HISTORY RECORD INFORMATION
MAY BE SUBJECT TO CRIMINAL AND/OR CIVIL PENALTIES. THIS RECORD IS
CERTIFIED AS A TRUE COPY OF THE CRIMINAL HISTORY RECORD INFORMATION
ON FILE FOR THE ASSIGNED STATE IDENTIFICATION NUMBER.

STATE ID NO. (b)(7)(E) FBI NO. (b)(7)(E) DATE REQUESTED. 09/02/2010

NAME: (b)(7)(E)

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR BIRTH PLACE
M W (b)(7)(E) MM

RECEIVING AGENCY: (b)(7)(E) U.S. CITIZEN: NO

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

TECS II EXTERNAL MESSAGE DISPLAY

 $\phi(z)(q)$

QUEUE NAME: (b)(7)(E)
MSG STATUS:

*** PAGE 03 *****
III: MULTI STATE
DNA AVAILABLE: YES

- potential

(c)(2)(A)-(3)(A)

NJ 10306

★ ★ ★ ★ ★ ★ ★ ★

(b)(2)(g)-(g)(g)

UNION

DOB USED: (b)(2)(b)(7)(D)

9721

 $c(\mathbb{Z})(q)$

14:15

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 04 *****

001 CNT 2C:39-1

POSS WEAPON

SUMMONS/WARRANT

PROMIS/GAVEL NO:

NO: (b)(7)(E)

DISPOSITION DATE: 07/27/2007

AGENCY: (b)(7)(E)

MUNICIPAL COURT LINDEN

DISPOSITION: ADJUDICATED DELINQUENT

001 CNT: 2C:39-3E

DEG:

POSSESS CERTAIN WEAPONS

AGGREGATE SENTENCE

DATE: 07/27/2007

COURT: (b)(7)(E)

MUNICIPAL COURT LINDEN

AMOUNT ASSESSED \$

45

DEPARTMENT OF CORRECTIONS DATA NOT FOUND FOR THIS SID NUMBER

CRIMINAL HISTORY DIVERSION PROGRAM AND FELONY CONVICTION SUMMARY

PRE-TRIAL INTERVENTION: 000

CONDITIONAL DISCHARGE: 000

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

14:15

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 05 *****

FELONY CONVICTIONS: 000

VIOLATION OF PROBATION: 000

COURT DISPOSITION INFORMATION CONTAINED IN THIS RECORD IS REPORTED
ELECTRONICALLY FROM THE SENTENCING COURT. QUESTIONS CONCERNING DISPOSITION
INFORMATION SHOULD BE DIRECTED TO THE MUNICIPAL OR SUPERIOR COURT LISTED ON
THE RECORD. INFORMATION REGARDING CORRECTIONS TO THIS RECORD MAY BE DIRECTED
TO THE SBI AT (609)882- (b)(7)(E)

END OF CCH RECORD

END OF RECORD

MESSAGE IS DISPLAYED. (b)(7)(E)

END OF THIS MESSAGE (b)(7)(E)

CIMSIN
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX SYSTEM - DETAILED SEARCH DIST Y

09/02/10
14:09:49

A#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C)
* DIGITIZED FILE - VIEW THE FILE IN IDDMP *

DOB: (b)(6), (b)(7)(C)

LAST: (b)(6), (b)(7)(C)
FIRST: (b)(6), (b)(7)(C)
MIDDLE:
ALIASES:

NATZ DATE:
COURT:
LOCATION:

SEX: M POE: UNK COB: MEXIC DOE: 00000000
FCO: DIG COA: DEP COC: MEXIC FTC: 05192010
PFCO: LSC SFCO: DFO: 11152007 BIN:

FATHER: (b)(6), (b)(7)(C)
MOTHER: (b)(6), (b)(7)(C)

SSN:
I-94 ADM #:
PASSPORT #:
FBI #: (b)(6), (b)(7)(C), (b)(7)(D)
DRIVER LIC:
FINGER CD#:

CONSOLIDATED A-NOS

--OTHER INFORMATION--

(b)(7)(D)

(b)(7)(D)

*Possible
Contains prints*

CIMDHI PAGE: 0001 DEPARTMENT OF HOMELAND SECURITY - USCIS
COMMAND: CENTRAL INQUIRY SYSTEM - STATUS/HISTORY DATA

09/02/10
14:10:06

A#: (b)(6) (b)(7)(C) NAME: (b)(6) (b)(7)(C)

DOB: (b)(6) (b)(7)(C)

ACTION	LOC	ACTION-DATE	ST	REASON/ COURT#	MISC	ID NUMBER/ MISC-DATE	KEYED-DATE
STATUS CHANGE	ATL	00/00/0000		EWI			12/20/2007
(b)(6) DEPORTED	HID	12/06/2007	6	(b)(6)	MEXIC	12/20/2007	12/20/2007

*** END OF HISTORY DISPLAY ***

(b)(6)

14:15

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:14:06

CR (b)(7)(E)

11:14 09/02/2010 07125

11:14 09/02/2010 83904 (b)(7)(E)

TXT

HDR (b)(7)(E)

ATN (b)(7)(E) (b)(7)(E)

***** CRIMINAL HISTORY RECORD *****
***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number

(b)(7)(E) (b)(7)(E) (b)(7)(E)

State Id Number

(b)(7)(E) (b)(7)(E) ()

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

14:15

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)e

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

Request Id

(b)(7)e

Purpose Code

C

Attention

(b)(6), (b)(7)(C)

The information in this rap sheet is subject to the following caveats:
Multi-Source - Subject has information maintained by other states or in
multiple NYS files maintained by the FBI available through the

(b)(7)e Refer to FBI Number: (b)(6), (b)(7)(C), (b)(7)e (New
York State Department Of Criminal Justices; 2010-09-02)

This NYSID Number was used previously and is now reassigned to this
individual. (New York State Department Of Criminal Justices; 2010-09-02)
Sentencing - Where an individual is sentenced June 1, 1981 or later on
more than one charge within a docket, the sentence may be considered to
be concurrent unless identified as consecutive. (New York State
Department Of Criminal Justices; 2010-09-02)

***** IDENTIFICATION *****

MESSAGE IS DISPLAYED.

(b)(7)e

(b)(7)e

14:15

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)D

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 03 *****

Subject Name(s)

(b)(6), (b)(7)(C)

Subject Description

FBI Number

State Id Number

(b)(6), (b)(7)(C), (b)(7)D

(b)(6), (b)(7)(C)

Sex

Race

Skin Tone

Male

White

Dark

Height

Weight

Date of Birth

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Hair Color

Eye Color

(b)(6), (b)(7)(C)

Place of Birth

Ethnicity

Unknown

Hispanic Or Latino

Residence

Residence as of

MESSAGE IS DISPLAYED.

(b)(7)D

(b)(7)D

14:16

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 04 *****

(b)(7)(E) (b)(7)(E)
BROOKLYN, NY

Caution Information
Notice

Open Bench Warrant(s) on File

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Tracking Number (b)(7)(E)

Earliest Event Date 2009-06-15 Incident Date 2009-06-15

Arrest Date 2009-06-15

Arresting Agency (b)(7)(E) NYCPD PCT 062

Subject's Name (b)(7)(E) (b)(7)(E)

Charge Tracking Number (b)(7)(E) (b)(7)(E)

Statute Criminal Mischief: Intent To Damage Property
(145.00 SUB 01;)

MESSAGE IS DISPLAYED.

(b)(7)(E)

(b)(7)(E)

09:59

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(D)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(D) ON 09/30/10 AT 09:57:29

RR. (b)(7)(D)

06:57 09/30/2010 70982

06:57 09/30/2010 45395 (b)(7)(D)

TXT

LIC/ (b)(7)(D) VIN/ (b)(7)(D) MAKE/ (b)(7)(D) YR/ (b)(7)(D) EXP/20101231

TITLE/ (b)(7)(D) MODEL/ (b)(7)(D) BODY/ (b)(7)(D) VCO/ (b)(7)(D)

OWNER/ (b)(7)(D) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(D)

WT/ 000000000

NASHVILLE

TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

(b)(7)(D)

(b)(7)(D)

(b)(7)(D)

(b)(7)(D)

72

09:59

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

PAGE 01 *****

***** TEXT OF MESSAGE *****
FROM (b)(7)(E) ON 09/30/10 AT 09:57:17

RR: (b)(7)(E)

06:57 09/30/2010 70978

06:57 09/30/2010 45367 (b)(7)(E)

(b)(7)(E)

TXT
LIC/ (b)(7)(E) VIN (b)(7)(E) MAKE/ (b)(7)(E) YR/ (b)(7)(E) EXP/20110930

TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)

OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000000000

ANTIOCH TN 37013

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

09:58

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/30/10 AT 09:57:00

RR (b)(7)(E)

06:57 09/30/2010 70971

06:57 09/30/2010 45312 (b)(7)(E)

(b)(7)(E)

TXT
LIC/ (b)(7)(E) VIN (b)(7)(E) MAKE/ (b)(7)(E) YR/ (b)(7)(E) EXP/20101231
TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)
OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED. (b)(7)(E)

END OF THIS MESSAGE
(b)(7)(E)

09:58

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/30/10 AT 09:56:51

RR: (b)(7)(E)

06:56 09/30/2010 70966

06:56 09/30/2010 45277 (b)(7)(E)

(b)(7)(E)

TXT
LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20091130
TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)
OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E) WT/ 000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

09:57

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/30/10 AT 09:55:14

RR (b)(7)(E)

06:55 09/30/2010 70928

06:55 09/30/2010 44952 (b)(7)(E)

(b)(7)(E)

TX
LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20110831
TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)
OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E) WT/ 000000000
NASHVILLE TN 37211 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

09:57

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/30/10 AT 09:55:04

RR. (b)(7)(E)

06:55 09/30/2010 70921

06:55 09/30/2010 44919 (b)(7)(E)

(b)(7)(E)

TEXT

LIC/ (b)(7)(E) VIN/ (b)(7)(E) MAKE/ (b)(7)(E) YR/ (b)(7)(E) EXP/20110630

TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)

OWNER/GLICERIO HERNANDEZ FLORES CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

09:54

TECS II EXTERNAL MESSAGE DISPLAY

09302010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/30/10 AT 09:54:17

RR (b)(7)(E)

06:54 09/30/2010 98158

06:54 09/30/2010 44770

TXT

(b)(7)(E)

VYR/(b)(7)(E) VMA/(b)(7)(E) VMO/006000 VST/(b)(7)(E) VCO/(b)(7)(E)
VIN/(b)(7)(E) LIC/(b)(7)(E) EXP/102011

(b)(7)(E)

NEW ORLEANS LA 70125

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

14:21

TECS II EXTERNAL MESSAGE DISPLAY

09022010

QUEUE TYPE: PERSONAL

QUEUE NAME:
MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE *****

PAGE 01 *****

FROM (b)(7)(E) ON 09/02/10 AT 14:17:28

RR (b)(7)(E)

11:17 09/02/2010 37561

11:17 09/02/2010 84921 (b)(7)(E)

(b)(7)(E)

TXT
LIC/(b)(7)(E) VIN/(b)(7)(E) MAKE/(b)(7)(E) YR/(b)(7)(E) EXP/20110831
TITLE/(b)(7)(E) MODEL/(b)(7)(E) BODY/(b)(7)(E) VCO/(b)(7)(E)
OWNER/(b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/(b)(7)(E) WT/ 0000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:21

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/02/10 AT 14:17:38

RR (b)(7)(E)

11:17 09/02/2010 37566

11:17 09/02/2010 84969 (b)(7)(E)

TEXT

LIC/ (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR/ (b)(7)(E) EXP/20100930

TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)

OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000000000

NASHVILLE TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:21

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:17:48

RR. (b)(7)(E)

11:17 09/02/2010 37569

11:17 09/02/2010 85005 (b)(7)(E)

TXT

LIC/ (b)(7)(E) VIN/ (b)(7)(E) MAKE/ (b)(7)(E) YR/ (b)(7)(E) EXP/20100831

TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)

OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000006000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:21

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:18:03

RR (b)(7)(E)

11:18 09/02/2010 37572

11:18 09/02/2010 85075 (b)(7)(E)

(b)(7)(E)

TEXT

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20110331

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)

OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E) WT/ 000000000

ANTIOCH

TN 37013

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:21

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/02/10 AT 14:18:19

RR. (b)(7)(E)

11:18 09/02/2010 37589

11:18 09/02/2010 85165 (b)(7)(E)

(b)(7)(E)

TXT

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20110131

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO (b)(7)(E)

OWNER (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR (b)(7)(E)

WT/ 000000000

NASHVILLE

TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:21

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:18:31

RR (b)(7)(E)

11:18 09/02/2010 37601

11:18 09/02/2010 85217 (b)(7)(E)

(b)(7)(E)

TXT
LIC (b)(7)(E) VIN/ (b)(7)(E) MAKE (b)(7)(E) YR/ (b)(7)(E) EXP/20101130
TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)
OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000000000
ANTIOCH TN 37013 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

14:22

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS: (E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:18:40

RR: (b)(7)(E)

11:18 09/02/2010 37610

11:18 09/02/2010 85247 (b)(7)(E)

(b)(7)(E)

TXT

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20110331

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO/ (b)(7)(E)

OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E)

WT/ 000000000

NASHVILLE

TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

14:22

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/02/10 AT 14:19:24

RR (b)(7)(E)

11:19 09/02/2010 37634

11:19 09/02/2010 85474 (b)(7)(E)

(b)(7)(E)

TXT LIC/(b)(7)(E) VIN/(b)(7)(E) MAKE/(b)(7)(E) YR/(b)(7)(E) EXP/20110228

TITLE/(b)(7)(E) MODEL/(b)(7)(E) BODY/(b)(7)(E) VCO/(b)(7)(E)

OWNER/(b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/(b)(7)(E) WT/ 000000000

NASHVILLE TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

(b)(7)(E)

14:23

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)

MSG STATUS:

(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****

FROM (b)(7)(E) ON 09/02/10 AT 14:19:53

RR (b)(7)(E)

11:19 09/02/2010 37648

11:19 09/02/2010 85579 (b)(7)(E)

TXT

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/19980131

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO/

OWNER (b)(7)(E) CO-OF-REG/SEVIER

ADDR (b)(7)(E) WT/ 000000000

SEVIERVILLE TN 37876 CLSCD/1000 ISSYR/1994

LIC (b)(7)(E) VIN (b)(7)(E) MAKE (b)(7)(E) YR (b)(7)(E) EXP/20110531

TITLE (b)(7)(E) MODEL (b)(7)(E) BODY (b)(7)(E) VCO/ (b)(7)(E)

MESSAGE IS DISPLAYED.

FIRST PAGE OF MESSAGE

(b)(7)(E)

14:23

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 02 *****

OWNER/ (b)(7)(E) (b)(7)(E)

CO-OF-REG/UNKNOWN

ADDR/ (b)(7)(E) (b)(7)(E)

WT/ 000000000

NASHVILLE TN 37217

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

14:24

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME: (b)(7)(E)
MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:20:11

RR (b)(7)(E)

11:20 09/02/2010 37655

11:20 09/02/2010 85645 (b)(7)(E)

(b)(7)(E)

TXT
LIC/ (b)(7)(E) (b)(7)(E) VIN/ (b)(7)(E) (b)(7)(E) MAKE/ (b)(7)(E) (b)(7)(E) YR/ (b)(7)(E) (b)(7)(E) EXP/20110831
TITLE (b)(7)(E) (b)(7)(E) MODEL/ (b)(7)(E) (b)(7)(E) BODY/ (b)(7)(E) (b)(7)(E) VCO/ (b)(7)(E) (b)(7)(E)
OWNER/ (b)(7)(E) (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) (b)(7)(E) WT/ 000000000
NASHVILLE TN 37211 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

14:24

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:

(b)(7)(E)

MSG STATUS:

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:20:49

RR (b)(7)(E)

11:20 09/02/2010 37670

11:20 09/02/2010 85845 (b)(7)(E)

(b)(7)(E)

TXT

LIC (b)(7)(E) VIN/ (b)(7)(E) MAKE/ (b)(7)(E) YR/ (b)(7)(E) EXP/20110731

TITLE/ (b)(7)(E) MODEL/ (b)(7)(E) BODY/ (b)(7)(E) VCO/ (b)(7)(E)

OWNER/ (b)(7)(E) CO-OF-REG/DAVIDSON

ADDR/ (b)(7)(E) WT/ 000000000

NASHVILLE TN 37211

CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

(b)(7)(E)

END OF THIS MESSAGE

(b)(7)(E)

14:26

TECS II EXTERNAL MESSAGE DISPLAY

09022010

(b)(7)(E)

QUEUE TYPE: PERSONAL

QUEUE NAME:
MSG STATUS:

(b)(7)(E)

***** TEXT OF MESSAGE ***** PAGE 01 *****
FROM (b)(7)(E) ON 09/02/10 AT 14:25:49

RR (b)(7)(E)

11:25 09/02/2010 37776

11:25 09/02/2010 87197

TXT
LIC/(b)(7)(E) VIN/(b)(7)(E) MAKE/(b)(7)(E) YR/(b)(7)(E) EXP/20101231
TITLE/(b)(7)(E) MODEL/(b)(7)(E) BODY/4 DOOR CO-OF-REG/DAVIDSON
OWNER/(b)(7)(E)

ADDR/(b)(7)(E) WT/ 000000000
NASHVILLE TN 37217 CLSCD/1000 ISSYR/2006

MESSAGE IS DISPLAYED.

END OF THIS MESSAGE

24/7 Search and Technical Assistance 1-866-277-2777
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My Accurant People Business Assets Licenses Courts Phones Healthcare AV
Advanced Person Person People At Work Death Records More Searches

Reference: 1

Street Address: (b)(6), (b)(7)(C) NASHVILLE TN 37217-1226
City: NASHVILLE State: TN Zip: 37217
County: Radius
DOB: Age Range
Phone: (b)(6), (b)(7)(C)

Include name variations
Last Name First Name Middle Name SSN

Coverage | Help?

Important: The Pul available data source is sometimes incorrect and is ge More

Person Search Results
Search Terms Used - Street: (b)(6), (b)(7)(C)
City: NASHVILLE, State: TN
Records: 1 to 25 of 55
Result Page: 1 2 3 4
Edit Search New Search Print Results Export to Excel

All Full Name SSN Address Phone Next Steps

1. copy Gender: Male (b)(6), (b)(7)(C) View Sources NASHVILLE TN 37217-1226 Mar 09 - Oct 10 Probable current address (b)(6), (b)(7)(C) CDT 615-367- (b)(6) Relatives Neighbors Associates & Associates Relatives, Neighbors People at Work

2. copy Gender: Male (b)(6), (b)(7)(C) View Sources NASHVILLE TN 37217-1226 Aug 03 - Nov 08 Probable current address (b)(6), (b)(7)(C) 615-367- (b)(6) Relatives Neighbors Associates & Associates Relatives, Neighbors People at Work

Reports: Comprehensive Report Other Reports Reliant Report Finder Report Address Report Learn how Accurant Reports can assist you: See Examples

10/5/2010
https://secure.accurant.com/app/bps/misc
1/24/10
Relatives (b)(6), (b)(7)(C), (b)(7)(E) (b)(6), (b)(7)(C)
Gender: Male View Sources NASHVILLE TN 37217-1226 (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

Person Search

DOB: 1968 (42)	(~1)	Oct 09	Neighbors Associates Relatives, Neighbors & Associates People at Work
☒ Comprehensive Report ☐ Other Reports ☐ Relavint Report ☐ Finder Report ☐ Address Report			Learn how Accurint Reports can assist you: See Examples

Report

Dep 3/22/10 A

B/B
Prwa Dept

4. ☒ COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Gender: Male DOB: 1968 (42) ☒ Setup Alert *View Sources NASHVILLE TN 37217-1226 (~2) Oct 09 - Aug 10				
☒ Comprehensive Report ☐ Other Reports ☐ Relavint Report ☐ Finder Report ☐ Address Report				Learn how Accurint Reports can assist you: See Examples

AO
DL

5. ☒ COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
Gender: Male DOB: 1968 (42) ☒ Setup Alert *View Sources NASHVILLE TN 37217-1226 (~3) Jan 10 - Sep 10				
☒ Comprehensive Report ☐ Other Reports ☐ Relavint Report ☐ Finder Report ☐ Address Report				Learn how Accurint Reports can assist you: See Examples

6. ☒ COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates
*View Sources NASHVILLE TN 37217-1226 (~2) Sep 99				
☒ Comprehensive Report ☐ Other Reports ☐ Relavint Report ☐ Address Report				Learn how Accurint Reports can assist you: See Examples

PUI

7. ☒ COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates
Gender: Male DOB: (b)(6), (b)(7)(C) (28) (~2) *View Sources NASHVILLE TN 37217-1226 Mar 07 - May 10				
☒ Comprehensive Report ☐ Other Reports ☐ Relavint Report ☐ Address Report				Learn how Accurint Reports can assist you: See Examples

8. ☒ COPY	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	(b)(6), (b)(7)(C)	Relatives Neighbors Associates Relatives, Neighbors & Associates
Gender: Male *View Sources NASHVILLE TN 37217-1226 (~1) Jan 06				

Reports: Comprehensive Report Other Reports Relavint Report Address Report [Learn how Accurant Reports can assist you: See Examples](#)

9. COPY (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) *View Sources NASHVILLE TN 37217-1226
(~1) Mar 91 - Jan 95
Gender: Male
Relatives
Neighbors
Associates
Relatives, Neighbors & Associates

Reports: Comprehensive Report Other Reports Relavint Report Address Report [Learn how Accurant Reports can assist you: See Examples](#)

10. COPY (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) *View Sources NASHVILLE TN 37217-1226
(~2) Jan 10 - Feb 10
Gender: Male
DOB: 1968 (42)
 Setup Alert
Relatives
Neighbors
Associates
Relatives, Neighbors & Associates
People at Work

Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report [Learn how Accurant Reports can assist you: See Examples](#)

11. COPY (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) *View Sources NASHVILLE TN 37217-1226
(~1) Apr 10
Gender: Female
DOB: (45)
 Setup Alert
Relatives
Neighbors
Associates
Relatives, Neighbors & Associates
People at Work

Reports: Comprehensive Report Other Reports Relavint Report Finder Report Address Report [Learn how Accurant Reports can assist you: See Examples](#)

12. COPY (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) *View Sources NASHVILLE TN 37217-1226
(~4) Dec 03 - Mar 08
Gender: Male
Relatives
Neighbors
Associates
Relatives, Neighbors & Associates

Reports: Comprehensive Report Other Reports Relavint Report Address Report [Learn how Accurant Reports can assist you: See Examples](#)

13. COPY (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) *View Sources NASHVILLE TN 37217-1226
(~1) Dec 03
Gender: Male
Relatives
Neighbors
Associates
Relatives, Neighbors & Associates

Reports: Comprehensive Report Other Reports Relavint Report Address Report [Learn how Accurant Reports can assist you: See Examples](#)

14. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) 615-365 (b)(6)
 Gender: Male *View Sources NASHVILLE TN 37217-1226 CDT
 (~3) Nov 98 - Mar 08
 Setup Alert

Relatives
 Neighbors
 Associates
 Relatives,
 Neighbors &
 Associates
 People at Work

Reports: Comprehensive Report Other Reports RelayInt Report Finder Report Address Report Learn how Accurint Reports can assist you: See Examples

15. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)
 Gender: Male *View Sources NASHVILLE TN 37217-1226
 (~3) Apr 04 - Mar 08
 DOB (b)(6), (b)(7)(C) (39)

Relatives
 Neighbors
 Associates
 Relatives,
 Neighbors &
 Associates

Reports: Comprehensive Report Other Reports RelayInt Report Address Report Learn how Accurint Reports can assist you: See Examples

16. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)
 Gender: Male *View Sources NASHVILLE TN 37217-1226
 (~1) Aug 04

Relatives
 Neighbors
 Associates
 Relatives,
 Neighbors &
 Associates

Reports: Comprehensive Report Other Reports RelayInt Report Address Report Learn how Accurint Reports can assist you: See Examples

17. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) 615-365 (b)(6)
 Gender: Male *View Sources NASHVILLE TN 37217-1226 CDT
 (~4) Mar 04 - Feb 09
 DOB (b)(6), (b)(7)(C) (37)

Relatives
 Neighbors
 Associates
 Relatives,
 Neighbors &
 Associates

Reports: Comprehensive Report Other Reports RelayInt Report Address Report Learn how Accurint Reports can assist you: See Examples

18. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)
 Gender: Male *View Sources NASHVILLE TN 37217-1226
 (~1) Jun 10

Relatives
 Neighbors
 Associates
 Relatives,
 Neighbors &
 Associates

Reports: Comprehensive Report Other Reports RelayInt Report Address Report Learn how Accurint Reports can assist you: See Examples

19. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)
 Gender: Female *View Sources NASHVILLE TN 37217-1226
 (~1) Jan 10

Relatives
 Neighbors
 Associates

				Relatives, Neighbors & Associates
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report
				Learn how Accurant Reports can assist you: See Examples

20.		(b)(6), (b)(7)(C)	View Sources (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)	NASHVILLE TN 37217-1226	Relatives Neighbors Associates Relatives, Neighbors & Associates People at Work
		Gender: Male	(-4)	Oct 09 - Jun 10	
		DOB: (b)(6), (b)(7)(C) (42)			
		Setup Alert			
Reports:	Comprehensive Report	Other Reports	Relavint Report	Finder Report	Address Report
				Learn how Accurant Reports can assist you: See Examples	

21.		(b)(6), (b)(7)(C)	View Sources (b)(6), (b)(7)(C)	NASHVILLE TN 37217-1226	Relatives Neighbors Associates Relatives, Neighbors & Associates
		Gender: Male	(-2)	Sep 09 - Jun 10	
		DOB: 01/24/1968 (42)			
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurant Reports can assist you: See Examples

22.		(b)(6), (b)(7)(C)	View Sources (b)(6), (b)(7)(C)	NASHVILLE TN 37217-1226	Relatives Neighbors Associates Relatives, Neighbors & Associates
		Gender: Female	(-1)	Jun 07 - Jun 08	
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurant Reports can assist you: See Examples

23.		(b)(6), (b)(7)(C)	View Sources (b)(6), (b)(7)(C)	NASHVILLE TN 37217-1226	Relatives Neighbors Associates Relatives, Neighbors & Associates
		Gender: Male	(-1)	Apr 09 - Oct 09	
		DOB: (b)(6), (b)(7)(C) (19)			
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurant Reports can assist you: See Examples

24.		(b)(6), (b)(7)(C)	View Sources (b)(6), (b)(7)(C)	NASHVILLE TN 37217-1226	Relatives Neighbors Associates Relatives, Neighbors & Associates
		Gender: Male	(-1)	Mar 07 - Mar 08	

Person Search

Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurint Reports can assist you: See Examples
25. COPY	(b)(6), (b)(7)(C) Gender: Male	*View Sources (~1)	NASHVILLE TN 37217-1226 Jun 10		Relatives Neighbors Associates Relatives, Neighbors & Associates
Reports:	Comprehensive Report	Other Reports	Relavint Report	Address Report	Learn how Accurint Reports can assist you: See Examples

Records: 1 to 25 of 55

Result Page: 1 2 3 ▶

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Case Search Results

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Defendant Details

Defendant

(b)(6), (b)(7)(C)

Case Number

(b)(6), (b)(7)(C)

Defendant Status

CONCLUDED

Case Status

CLOSED

Appearance Details

Date

Judge

Court Room

Attorney

Reason

Charge Details

Charged/Cited Offense(s)

Convicted

Disposition

Bond

Date

Driv. Lic. Suspended

Dismissed-Costs
to Defendant

01/13/2005

Charging Instrument

Downloads

N/A

Search Disclaimer

Search will retrieve names as submitted by arresting agency to this office. Some search results may produce records without a date of birth -- If so, please verify by visiting our office before using for official purpose.

NOTE: The "detailed background information" report available via your search will be separated in the following categories - CJIS Data and Legacy Data. The definition of each is as follows:

■ CJIS Data

- General Sessions Court dispositions beginning January 11, 2000
- State Trial Court dispositions beginning July 11, 2000

■ Legacy Data

- Records posted between 1980 and the dates noted above

For records prior to 1980, please contact our office directly.

The public information viewed here reflects the actual filed documents or docket kept by the Office of the Davidson County Criminal Court Clerk which are considered records and contained in the official case files. The information provided herein includes with which an individual was charged/cited and the disposition(s) if the case has information is contained herein regarding charges/citations that have been expunged. The data entry can generally be deemed reliable. However, the information is not guaranteed. It is important to note the Tennessee General Assembly has made it a law that information to be made public once it has been expunged pursuant to T.C.A. 40-6-101. It is strongly suggested that you update any search before using the information for any purpose. No event shall the Criminal Court Clerk of Davidson County, Tennessee, be held liable for damage of any nature, direct or indirect, arising from the use of this internet service or product.

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Information &
Research Davidson
County Criminal R.



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Criminal Justice Statist
Forms
FAQ's
Useful Links
Court Parking & Directi
Vea esta Pagina en Esp

COURT RESOURCES

Division III Court Proce
Search Public Case Inf
Local Rules of Court
Bail Bonds - Local Rule
Jail Docket Schedule

ADDITIONAL SERVICES

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

C-102



Criminal Court Clerk
Nashville • Davidson County

408 2nd Avenue, North
Suite 2120
Nashville, TN 37201
615-862-5601

All-Database Search Results:

TOP (0)TWP (0)

1 of 1 potential match for "(b)(6), (b)(7)(C)" All"

(b)(6), (b)(7)(C)

1 of 1

**Current color may be
different than color stated.*

Access to Interactive Vehicle,
Title, and Registration
inquiries is governed by the
Federal Driver's Privacy
Protection Act of 2000
(DPPA).

VIN#:	(b)(6), (b)(7)(C)
Plate:	(b)(6), (b)(7)(C)
Issued:	2006
Expired:	03/31/2011
Class:	Private Passenger Car
Commercial Vehicle:	N
Type:	Automobile
Make:	(b)(6), (b)(7)(C)
Model:	
Style:	4-door Automobile, Sport Utility or Wagon
Color:*	(b)(6), (b)(7)(C)
Year:	1996
County:	Davidson
Jointly Owned:	Y
Owner 1:	(b)(6), (b)(7)(C) HERMITAGE TN 37076-0000
Owner 2:	(b)(6), (b)(7)(C)

** Current color may be different than color stated.*

Deconfliction☐ Flag this Record**Lessor****Vehicle not leased****Lien****No Reported Liens on Vehicle**

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All-Database Search Results:

TOP (0)

TWP (0)

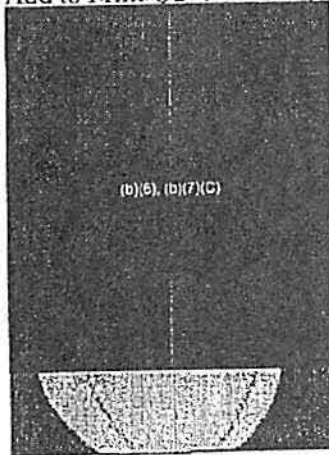
(b)(6),(b)(7)(C)

NOT
Available

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Add to Print Queue 1 of 1 potential matches



*DL photos cannot be disseminated to the public or press without the express written consent of the Department of Safety.

Personal Information

License Type: Class D Only
Non CDL Status: SUSPENDED
CDL Status: NONE
DL#: (b)(6), (b)(7)(C)
Issued: 07/25/2006
Expires: 06/15/2011
Duplicates Issued: 0

Gender: F
Race: Hispanic
Height: (b)(6), (b)(7)(C)
Weight: (b)(6), (b)(7)(C)
Eye Color: (b)(6), (b)(7)(C)
Hair Color: (b)(6), (b)(7)(C)
D.O.B.: (b)(6), (b)(7)(C)
SSN: (b)(6), (b)(7)(C)

County: Davidson

Residence:

HERMITAGE, TN 37076

Last Updated: 07/25/2006

Mailing: Not Available

Last Updated: Not Available

Access to Driver License inquiries is governed by the Federal Driver's Privacy Protection Act of 2000 (DPPA).

Deconfliction

☐ Flag this Record

Handguns

No Handgun Permit

Restrictions

None

Endorsements

None

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TOP (0)

TWP (0)

(b)(6),(b)(7)(C)

Not
Available

(b)(6),(b)(7)(C)

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Reinstatement Eligibility Date for Non-CDL: Indefinite

Reinstatement Eligibility Date for CDL: Indefinite

Former State/Lic No: / ** UNKNOWN **

1 - 9 of 9						
<u>Event Date</u>	<u>Action Date</u>	<u>Action Code</u>	<u>Location</u>	<u>Date Rec'd</u>	<u>MPH/Speed Zone</u>	<u>Case Number</u>
02/17/2006	03/03/2006	013	DAVIDSON	04/25/2006	000/000	(b)(6), (b)(7)(C)
NO DRI LIC; WRONG LIC FOR TYPE VEHICLE						
02/17/2006			DAVIDSON	11/12/2007	000/000	(b)(6), (b)(7)(C)
ACCIDENT - PROPERTY DAMAGE						
07/16/2008	01/02/2009	110	DAVIDSON	01/19/2009	000/000	(b)(6), (b)(7)(C)
FAILURE TO PROVIDE EVIDENCE OF FIN RESP						
07/16/2008	10/20/2008	008	DAVIDSON	11/26/2008	000/000	(b)(6), (b)(7)(C)
MAKING IMPROPER TURN						
04/23/2009	07/30/2009	050	DAVIDSON	08/14/2009	000/000	(b)(6), (b)(7)(C)
FAIL TO SATISFY CITATION/SUSP/NOTICE SENT						
04/23/2009	07/30/2009	050	DAVIDSON	08/14/2009	000/000	(b)(6), (b)(7)(C)
FAIL TO SATISFY CITATION/SUSP/NOTICE SENT						
04/23/2009	07/30/2009	050	DAVIDSON	08/14/2009	000/000	(b)(6), (b)(7)(C)

1 - 9 of 9

<u>Event Date</u>	<u>Action Date</u>	<u>Action Code</u>	<u>Location</u>	<u>Date Rec'd</u>	<u>MPH/Speed Zone</u>	<u>Case Number</u>
FAIL TO SATISFY CITATION/SUSP/NOTICE SENT						
05/21/2009	08/28/2009	050	DAVIDSON	09/14/2009	000/000	(b)(6), (b)(7)(C)
FAIL TO SATISFY CITATION/SUSP/NOTICE SENT						
05/21/2009	08/28/2009	050	DAVIDSON	09/14/2009	000/000	(b)(6), (b)(7)(C)
FAIL TO SATISFY CITATION/SUSP/NOTICE SENT						

Tennessee State Law Requires the Department of Safety to Record all Reportable Motor Vehicle Accidents. Accident Involvement Indicated on this Report Does Not Necessarily Mean the Individual was at Fault or Given a Citation.

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CIMIDN
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX SYSTEM - ID # SEARCH/DISPLAY

10/06/10
12:22:27

ID # (A/AA/AB/C/DA): (b)(6), (b)(7)(C)
(DL/FB/FP/I/PP/SS/TD)

A#: (b)(6), (b)(7)(C)

DOB: (b)(6), (b)(7)(C)

LAST: (b)(6), (b)(7)(C)
FIRST:
MIDDLE:
ALIASES:

NATZ DATE:
COURT:
LOCATION:

SEX: M POE: MEM COB: MEXIC DOE: 08162006
FCO: NRC COA: F26 COC: MEXIC FTC: 09152006
PFCO: NBC SFCO: DFO: 01252006 BIN:

FATHER: (b)(6), (b)(7)(C)
MOTHER:

SSN: (b)(6), (b)(7)(C)
I-94 ADM #:
PASSPORT #:
FBI #:
DRIVER LIC:
FINGER CD#:

CONSOLIDATED A-NOS

--OTHER INFORMATION--
EADS-X CARD-X

(b)(7)(d)

(b)(6), (b)(7)(C)

No other found

CIMDHI PAGE: 0001 DEPARTMENT OF HOMELAND SECURITY - USCIS
COMMAND: CENTRAL INTELLIGENCE SYSTEM - STATUS/HISTORY DATA

10/06/10
12:22:35

A#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C)

DOB: (b)(6), (b)(7)(C)

ACTION	LOC	ACTION-DATE	ST	REASON/ COURT#	MISC	ID NUMBER/ MISC-DATE	KEYED-DATE
CLAIMS	MSC	01/25/2006		PEN	I485		01/25/2006
CLAIMS	MEM	08/16/2006		F26	I485		08/18/2006

*** END OF HISTORY DISPLAY ***

(b)(7)(e)

CIMCARD
COMMAND:

DEPARTMENT OF HOMELAND SECURITY - USCIS
CENTRAL INDEX(STEM - ARR/BC CARD DISPLAY (D)

10/06/10
12:22:46

A#: (b)(6), (b)(7)(C) NAME: (b)(6), (b)(7)(C) DOB: (b)(6), (b)(7)(C)

LEGAL PERMANENT RESIDENT

CARD NAME: (b)(6), (b)(7)(C)

BIRTHDATE: (b)(6), (b)(7)(C)

INS A# (b)(6), (b)(7)(C)

CARD# (b)(6), (b)(7)(C)

CATEGORY: F26

PERMANENT RESIDENT SINCE: 08/16/2006

SEX: M

CARD EXPIRES: 08/18/2016

COB: MEXICO

(b)(6), (b)(7)(C)

MOTHER'S NAME: (b)(6), (b)(7)(C)

FATHER'S NAME: (b)(6), (b)(7)(C)

CARD PORT OF ENTRY: MEM

(b)(7)(D)

**DEPARTMENT OF HOMELAND SECURITY
FEDERAL LAW ENFORCEMENT TRAINING CENTER
OFFICE OF TRAINING APPLICATIONS
LEGAL DIVISION**



Homeland Security

LESSON PLAN

FOURTH AMENDMENT

1211

SEP/08

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ICE.2014-FOIA-01578.000572

Revised by:

(b)(6),(b)(7)(C)

Senior Instructors
Legal Division

SEP 2008

Revised by

(b)(6),(b)(7)(C)

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~~Page 1379 of 2353~~

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SYLLABUS

COURSE TITLE: FOURTH AMENDMENT

COURSE NUMBER: 1211

COURSE DATE: APR/08

LENGTH OF PRESENTATION:

OPTION	LECTURE	LAB	P.E.	TOTAL	PROGRAM
A	23:00	6:00	2:00	31:00	CITP
B	24:00	2:00 ¹		26:00	LMPT
C	22:00	4:00 ²	2:00 ³	28:00	UPTP
D	22:00	2:00		24:00	TSA-BTP
E	12:00			12:00	USMSI, NNSA, ICE-DOTT ⁴ (ICE-DOTT NOT TESTED) ICE_FOTP
F	22:00			22:00	A_FAMTP, A_BPOTP
G	4:00			4:00	ICITP, DOJOIG-IS
H	4:00			4:00	TSA-SATP
I	6:00			6:00	FDA-SATP
J	20:00			20:00	ICE-D
K	8:00			8:00	ICITP
L	2:00			2:00	BETP (Formerly PEETP)
M	3:00	1:00		4:00	IG-SWETP ⁵ (NOT TESTED)
N	6:00			6:00	C-NNSA-OST
O	7:00			7:00	PSYTP / PSTP
P	4:00			4:00	PSOTP
Q	4:00			4:00	VCITP

¹ 4th Amendment Computer Based Skills Assessment Lab, evaluated by written, multiple-choice examination.

² 4th Amendment Skills Lab.

³ 4th Amendment Computer Based Skills Assessment Lab.

⁴ ICE-DOTT is not tested.

⁵ IG-SWETP is not tested. The 4th hour of the class (the lab) is to review a student-generated search warrant application.

OPTION A

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, particularity, and other constitutional safeguards are identified and explained. Emphasis is placed on the proper preparation and execution of search warrants, as well as legal exceptions to the warrant requirements.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards.

OPTIONS B, C AND K

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, particularity, and other constitutional safeguards are identified and explained. Emphasis is placed on the proper preparation and execution of search warrants, as well as legal exceptions to the warrant requirements.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards.

OPTIONS D, E AND J

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, particularity, and other constitutional safeguards are identified and explained.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards.

OPTIONS F, G AND I

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, and other constitutional safeguards are identified and explained.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant in accordance with Federal law and Constitutional standards.

OPTION H

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. Emphasis is placed on the proper preparation and execution of search warrants.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the statutory and constitutional requirements for the preparation and execution of federal search warrants in accordance with Federal law and Constitutional standards.

OPTION L, N, O, P, Q

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the constitutional requirements for conducting a legal search in accordance with Federal law and Constitutional standards.

OPTION M
DESCRIPTION: This course examines the principles of search and seizure as applied to the search warrant application and execution.
TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the constitutional requirements for obtaining and executing a search warrant in accordance with Federal law and Constitutional standards.

ENABLING PERFORMANCE OBJECTIVES (EPO):

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	Master EPO List
EO1	X	X	X	X	X	X		X	X	X			X	X	X		1. Recognize when the Fourth Amendment applies to governmental action. MEPO 1211-1
EO1	X	X	X	X	X	X		X	X	X			X	X	X		2. Identify situations in which a reasonable expectation of privacy exists. MEPO 1211-2
EO1	X	X	X	X	X				X		X		X	X	X		3. Identify appropriate actions that may be taken when reasonable suspicion exists. MEPO 1211-3
EO1	X	X	X	X	X	X	X	X	X	X			X			X	4. Identify when law enforcement officers may or may not use race to justify stops or arrests in accordance with Department of Justice Guidelines. MEPO 1211-4
EO1	X	X	X	X	X	X		X	X	X			X	X	X		5. Identify when probable cause exists to the extent that an arrest or search may be justified. MEPO 1211-5
E03	X	X	X	X	X	X			X	X			X				6. Identify the origin, purpose and scope of the exclusionary rule. MEPO 1211-6
E03	X	X	X		X	X		X	X	X							7. Identify exceptions to the exclusionary rule, e.g., no standing to object, good faith, inevitable discovery, and impeachment. MEPO 1211-7
E03	X	X	X	X	X				X								8. Identify the limitations of an arrest warrant. MEPO 1211-8
E03	X	X	X	X	X				X						X		9. Identify when an arrest involving a felony requires the use of a warrant. MEPO 1211-9
E03	X	X	X	X	X				X								10. Identify when an arrest involving a misdemeanor requires the use of a warrant. MEPO 1211-10
E03	X	X	X	X					X			X					11. Identify the conditions under which an officer an officer may use force to execute a warrant (search or arrest) according to the provisions of Title 18 U.S.C. § 3109. MEPO 1211-11.
E03	X			X			X		X			X					12. Identify those officials who have the authority to issue Federal search warrants. MEPO 1211-12
E03	X						X		X			X					13. Identify the components of an affidavit for a search warrant. MEPO 1211-13

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Master EPO List
E03							X	X				X				14. Identify circumstances when a telephonic search warrant should be obtained. MEPO 1211-14
E03	X						X		X			X				15. Identify the legal requirements for executing a search warrant, e.g., authority to execute; time of entry; method of entry; locations on a premises which may be searched; duration of the search; and inventory. MEPO 1211-15
E03	X	X	X	X					X			X				16. Identify the scope and purpose of a protective sweep. MEPO 1211-16
E03	X						X		X			X				17. Identify circumstances in which persons on the premises may or may not be searched for evidence or frisked during the execution of a premises warrant. MEPO 1211-17
E03	X	X	X	X	X			X	X		X	X	X		X	18. Identify the circumstances in which evidence may be seized under the plain view doctrine. MEPO 1211-18
E03	X	X	X	X	X			X	X				X		X	19. Identify fact situations where warrantless searches are allowed regarding motor vehicles. MEPO 1211-19
E03	X	X	X	X	X				X						X	20. Identify fact situations where warrantless searches are allowed during exigent circumstances, e.g., hot pursuit, destruction or removal of evidence, and emergency scenes. MEPO 1211-20
E03	X	X	X	X	X				X		X				X	21. Identify the requirements and scope of a search incident to a lawful arrest. MEPO 1211-21
E03	X	X	X	X	X				X		X			X	X	22. Identify circumstances where a suspect's consent to search is voluntary. MEPO 1211-22
E03	X	X	X		X				X					X		23. Identify the circumstances in which a third party has the actual or apparent authority to grant consent to search a suspect's property. MEPO 1211-23
E03	X	X	X	X	X			X	X					X	X	24. Identify the requirements allowing an inventory of lawfully impounded personal property. MEPO 1211-24
E03	X	X	X	X	X				X					X	X	25. Identify the circumstances when an inspection is permitted for real and personal property. MEPO 1211-25

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P		Master EPO List
																	26. Identify circumstances when a warrant is required to seize vehicles subject to the general forfeiture statute. MEPO 1211-26

*** Where EPOs are tested on separate exams (e.g., CITP and USPPI), the session during which the EPOs must be taught are provided.

STUDENT SPECIAL REQUIREMENTS:

1. Satisfactory Completion of a Criminal Complaint (Options A-E).
2. Satisfactory Completion of an Affidavit and Application for Search Warrant (Option A)
3. Satisfactor Completion of Fourth Amendment Computer-Based Training Scenarios
4. Satisfactory Completion of "Probable Cause" laboratory (Option A).
5. Students must present an acceptable team generated search warrant application in the 4th hour of instruction for Option M.

METHOD OF EVALUATION:

1. Written, multiple-choice examination.
2. Satisfactory Completion of a Criminal Complaint (Options A-E).
3. Satisfactory Completion of an Affidavit and Application for Search Warrant (Option A).

INSTRUCTOR GUIDE

METHODOLOGIES:

1. Lecture.
2. Classroom Discussion.
3. Case Briefs.

TRAINING AIDS:

1. Instructor
 - a. Legal Division Sourcebook (Most Recent Edition).
 - b. "Warrantless Vehicle Search" Brochure (Most Recent Edition).
 - c. Instructional Videos
 - (1) "The Right to Privacy" – Video #33
 - (2) "Informers – Part 1" – Video #141
 - (3) "Chime! – Search Incident to Arrest" – Video #148
 - (4) "Consent Searches – Part 1, Authority to Consent" – Video #215
 - d. Podcasts – located online at (b)(7)(E)
 - e. Search Warrant Lab Guide
 - f. Fourth Amendment Legal Skills Lab Guide
 - g. Fourth Amendment Computer-Based Skills Lab Guide
 - h. Probable Cause Lab Guide
 - i. Phase 9 (Search Warrant Affidavit PE) Guide
2. Student:
 - a. Legal Division Sourcebook (Most Current Edition).
 - b. "Warrantless Vehicle Search" Brochure (Most Recent Edition)
 - c. Podcasts – located online at (b)(7)(E)

SPECIAL INSTRUCTOR REQUIREMENTS:

NONE

~~FOR OFFICIAL USE ONLY~~

OUTLINE OF INSTRUCTION

I. INTRODUCTION

A. THE FOURTH AMENDMENT

1. **The Language.** The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. **Two Distinct Clauses.** The Fourth Amendment contains two distinct clauses. See [Payton v. New York](#), 445 U.S. 573, 584 (1980) (“As it was ultimately adopted, however, the Amendment contained two separate clauses, the first protecting the basic right to be free from unreasonable searches and seizures and the second requiring that warrants be particular and supported by probable cause”). The first requires that all searches and seizures be reasonable. See [United States v. Jacobsen](#), 466 U.S. 109, 113 (1984) (Noting that the first clause of the Fourth Amendment “protects two types of expectations, one involving ‘searches,’ the other ‘seizures’”). The second clause mandates that probable cause exist before warrants may be issued, and that search warrants particularly describe the place to be searched and things to be seized.

B. AN OVERVIEW OF THE FOURTH AMENDMENT

1. **Courts Prefer Warrants.** “There is a strong preference for searches and entries conducted under the judicial auspices of a warrant.” [United States v. Holloway](#), 290 F.3d 1331, 1334 (11th Cir. 2002), cert. denied, 537 U.S. 1161 (2003). See, e.g., [Illinois v. McArthur](#), 531 U.S. 326, 338 (2001) (Souter, J., concurring) (“Instead, the legitimacy of the decision to impound the dwelling follows from the law’s strong preference for warrants, which underlies the rule that a search with a warrant has a stronger claim to justification on later, judicial review than a search without one”); [United States v. Hodge](#), 246 F.3d 301, 307 (3rd Cir. 2001) (“A grudging or negative attitude by reviewing courts toward warrants is inconsistent with the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant”).
2. **Warrants Can Save An Otherwise Doubtful Search.** “The resolution of doubtful or marginal cases in this area should be

largely determined by the preference to be accorded to warrants.” [United States v. Ventresca](#), 380 U.S. 102, 109 (1965). *See also*, [United States v. Leon](#), 468 U.S. 897, 922 (1984)(“Searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search”)(internal brackets and citations omitted); [Jones v. United States](#), 362 U.S. 257, 270-271 (1960) (overruled on other grounds)(“In a doubtful case, when the officer does not have clearly convincing evidence of the immediate need to search, it is most important that resort be had to a warrant, so that the evidence in the possession of the police may be weighed by an independent judicial officer, whose decision, not that of the police, may govern whether liberty or privacy is to be invaded”).

3. **Warrantless Searches are Presumed Unreasonable.** It is firmly ingrained in our system of law that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.” [Mincey v. Arizona](#), 437 U.S. 385, 390 (1978)(emphasis in original) (citation omitted). Thus, while a “defendant normally bears the burden of proving by a preponderance of the evidence that the challenged search or seizure was unconstitutional, where a police officer acts without a warrant, the government bears the burden of proving that the search was valid.” [United States v. Waldrop](#), 404 F.3d 465, 368 (5th Cir. 2005) (internal citations omitted).
4. **No Fourth Amendment Protection for Items Knowingly Exposed to the Public.** “What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” [Katz v. United States](#), 389 U.S. 347, 351 (1967). Alternatively, “what [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.” [Id.](#) at 351-352.

II. PRESENTATION

A. EPO #1: RECOGNIZE WHEN THE FOURTH AMENDMENT APPLIES TO GOVERNMENTAL ACTION

1. **General Rule – Addresses Government, Not Private, Action.** In [Burdeau v. McDowell](#), 256 U.S. 465, 475 (1921), the Supreme Court noted that “[t]he Fourth Amendment gives protection against unlawful searches and seizures, and ... its protection applies to governmental action. Its origin and history clearly show that it was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies” In sum, the Fourth Amendment does not limit private conduct, whether that conduct is reasonable or unreasonable. [Skinner v. Railway Labor Executives’ Ass’n](#), 489 U.S. 602, 614 (1989). See also [United States v. Jacobsen](#), 466 U.S. 109, 113 (1984)(“The Fourth Amendment is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the government or with the participation or knowledge of any government official”)(citation omitted); [United States v. Ellyson](#), 326 F.3d 522, 527 (4th Cir. 2003)(Noting that, because Fourth Amendment regulates only government conduct, “evidence secured by private searches, even if illegal, need not be excluded from a criminal trial”)(quotation omitted).
2. **“Government” Not Limited to Law Enforcement.** The term “government” does not solely refer to law enforcement conduct. Instead, the Fourth Amendment acts as a restraint on the entire government. The Supreme Court “has never limited the [Fourth] Amendment’s prohibition on unreasonable searches and seizures to operations conducted by the police.” [New Jersey v. T.L.O.](#), 469 U.S. 325, 335 (1985). See also [Linbrunner v. Abercia](#), 363 F.3d 537, 541 (5th Cir. 2004)(“Generally, the Fourth Amendment’s guarantees apply in both criminal and civil contexts”)(citing [Soldal v. Cook County](#), 506 U.S. 56 (1992). Accordingly, the Court has held the Fourth Amendment applicable to the activities of civil, as well as criminal, authorities. See, e.g., [Camara v. Municipal Court](#), 387 U.S. 523 (1967)(Building inspectors); [Marshall v. Barlow’s, Inc.](#), 436 U.S. 307 (1978)(Occupational Safety and Health Act inspectors); [Michigan v. Tyler](#), 436 U.S. 499 (1978)(Firemen entering privately-owned premises to battle a fire); [T.L.O.](#), *supra* (Public school officials); and [O’Connor v. Ortega](#), 480 U.S. 709 (1987)(plurality opinion)(State hospital administrators).
3. **When is a Search “Private”?**
 - a. **Acting While a Government Instrument or Agent Is Not a**

“Private” Search. While “a search or seizure by a private party does not implicate the Fourth Amendment ... the Fourth Amendment does apply to a search or seizure by a party (even if otherwise a private party) who is acting as an ‘instrument or agent’ of the government.” [United States v. Shahid](#), 117 F.3d 322, 325 (7th Cir.), cert. denied, 522 U.S. 902 (1997).

b. “Private” Searches May Become Government Searches Depending on the Degree of Government Participation.

Whether a private search has become governmental “necessarily turns on the degree of the government’s participation in the private party’s activities ... a question that can only be resolved in light of all the circumstances.” [Skinner](#), 489 U.S. at 614-615 (quotation omitted). In making such a determination, the lower courts used mixed approaches, focusing on a variety of factors, including:

- 1) **Whether the government knows of or acquiesces in the private actor’s conduct.**
- 2) **Whether the private party intends to assist law enforcement officers at the time of the search.**
- 3) **Whether the government affirmatively encourages, initiates, or instigates the private action.**

See, e.g., [United States v. Pervaz](#), 118 F.3d 1, 6 (1st Cir. 1997); [United States v. Ellyson](#), 326 F.3d 522, 527 (4th Cir. 2003); [United States v. Paige](#), 136 F.3d 1012, 1017 (5th Cir. 1998); [United States v. Lambert](#), 771 F.2d 83, 89 (6th Cir. 1985); [United States v. Shahid](#), 117 F.3d 322, 325-326 (7th Cir.), cert. denied, 522 U.S. 902 (1997); [United States v. Malbrough](#), 922 F.2d 458, 462 (8th Cir. 1990), cert. denied, 501 U.S. 1258 (1991); [United States v. Miller](#), 688 F.2d 652, 657 (9th Cir. 1982); [United States v. Smythe](#), 84 F.3d 1240, 1242-1243 (10th Cir. 1996).

4. Lawfulness of Government Search That Follows a Private Search

a. Searching Only What Has Already Been Searched Privately Does Not Implicate the Fourth Amendment.

When a private citizen intrudes into an individual’s property, some portion of the individual’s expectation of privacy has been destroyed. “Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now nonprivate information.” [United States v. Jacobsen](#), 466 U.S. 109, 117 (1984). In

sum, “a police view subsequent to a search conducted by private citizens does not constitute a ‘search’ within the meaning of the Fourth Amendment so long as the view is confined to the scope and product of the initial search.” [United States v. Runyan](#), 275 F.3d 449, 458 (5th Cir. 2001). This is because the conduct of the government agents allows them “to learn nothing that had not previously been learned during the private search.” [Jacobsen](#), 466 U.S. at 120.

- b. **Exceeding the Scope of a Private Search Does Implicate the Fourth Amendment.** If the government agents exceed the scope of the private intrusion, a “search” has occurred within the meaning of the Fourth Amendment. [Id.](#) at 117 (“The Fourth Amendment is implicated only if the authorities use information with respect to which the expectation of privacy has not already been frustrated”). See also [Walter v. United States](#), 447 U.S. 649, 657 (1980)(plurality opinion) (Where private search previously conducted, “the Government may not exceed the scope of the private search unless it has the right to make an independent search”); [United States v. Rouse](#), 148 F.3d 1040, 1041 (8th Cir. 1998); [United States v. Kinney](#), 953 F.2d 863, 866 (4th Cir.), *cert. denied*, 504 U.S. 989 (1992); [United States v. Donnes](#), 947 F.2d 1430, 1434 (10th Cir. 1991).

- c. **The Private Search Rationale of [Jacobsen](#) Will Not Always Extend to Private Searches of Residences.** The Sixth Circuit has refused to extend the private search rationale outlined above to private searches of residences. See, e.g., [United States v. Allen](#), 106 F.3d 695, 699 (6th Cir.), *cert. denied*, 520 U.S. 1281 (1997) (refusing to apply [Jacobsen](#) where a motel manager entered the defenant’s motel room and discovered controlled substances, then invited police to enter the room to view the same evidence). “Unlike the package at issue in [Jacobsen](#), which contained ‘nothing but contraband,’ people’s homes contain countless personal, non-contraband possessions. Certainly, a homeowner’s legitimate and significant privacy expectation in these possessions cannot be entirely frustrated simply because, *ipso facto*, a private party (e.g., an exterminator, a carpet cleaner, or a roofer) views some of those possessions.” [United States v. Paige](#), 136 F.3d 1012, 1020 n.11 (5th Cir. 1998), citing [Allen](#), 106 F.3d at 695 (emphasis in original). At least in the Sixth Circuit, therefore, the police would not be authorized to re-enter the home without a warrant to conduct a subsequent viewing of what the private party had previously observed, unless they did so pursuant

to consent or exigent circumstances.

The Fifth and Eighth Circuits, however, have held that where the private intrusion is reasonably foreseeable, police may view what the private party has seen without triggering the Fourth Amendment. See, e.g. Paige, 136 F.3d at 1019-1021 (hired roofers summoned police to view marijuana they found in attic while looking for supplies with owner's permission; no Fourth Amendment search); United States v. Bomengo, 580 F.2d 173 (5th Cir. 1978) (chief engineer of apartment building investigating water leak summoned officer to see two firearms he discovered; no Fourth Amendment search); United States v. Miller, 152 F.3d 813 (8th Cir. 1998) (employee of a halfway house unlocked and opened defendant's door to locate him and found drugs inside the room; police may enter room to view what employee saw without triggering the Fourth Amendment).

B. EPO #2: IDENTIFY SITUATIONS IN WHICH A REASONABLE EXPECTATION OF PRIVACY EXISTS

1. **General Rule – “Unreasonable Searches” Are Forbidden.** “The Fourth Amendment forbids searches and seizures that are unreasonable.” Terry v. Ohio, 392 U.S. 1, 9 (1967). In Katz v. United States, 389 U.S. 347 (1967), the Supreme Court established that a “search” occurs for Fourth Amendment purposes when the government violates a subjective expectation of privacy that society considers objectively reasonable. Id. at 361 (Harlan, J., concurring). “If the inspection by police does not intrude upon a legitimate expectation of privacy, there is no ‘search’ subject to the Warrant Clause.” Illinois v. Andreas, 463 U.S. 765, 771. (1983).
2. **“Searches” Defined.** A “search” implicating the Fourth Amendment occurs when the government intrudes on an individual’s reasonable expectation of privacy. See Katz, 389 U.S. at 361 (Harlan, J., concurring); Andreas, 463 U.S. at 771; Kyllo v. United States, 533 U.S. 27, 33 (2001) (“A Fourth Amendment search does not occur ... unless ‘the individual manifested a subjective expectation of privacy in the object of the challenged search,’ and ‘society [is] willing to recognize that expectation as reasonable’”); United States v. Ceballos, 385 F.3d 1120, 1123 (7th Cir. 2004) (“To assert a Fourth Amendment claim, an appellant must establish a legitimate expectation of privacy”).
3. **“Reasonable Expectation of Privacy” Defined.** “The Fourth Amendment does not protect privacy in any and all circumstances.

Among other limitations, a criminal defendant who wishes to embark upon a Fourth Amendment challenge must show that he had a reasonable expectation of privacy in the area searched and in relation to the items seized.” [United States v. Romain](#), 393 F.3d 63, 68 (1st Cir. 2004) (citation and internal quotation marks omitted). In [Katz v. United States](#), 389 U.S. 347 (1967)(Harlan, J., concurring), the Supreme Court established the standard for determining whether a reasonable expectation of privacy (REP) exists. The test for REP is two-pronged:

- a. **Subjective Demand.** First, the individual must have exhibited an actual (subjective) expectation of privacy; and,
- b. **Objectively Reasonable.** Second, that expectation must be one that society is prepared to recognize as reasonable.

If either prong of the test is not met, then no REP exists. For example, “conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.” [Katz](#), 389 U.S. at 361 (Harlan, J., concurring). Further, “what a person knowingly exposes is not constitutionally protected from observation.” [Id.](#) at 389 U.S. at 363 (Harlan, J., concurring). “Neither are activities or objects which are exposed, regardless of subjective intent, in a manner inconsistent with reasonable expectations of privacy. Thus, it is not a ‘search’ to observe that which occurs openly in public. Nor is it a search when a law enforcement officer makes visual observations from a vantage point he rightfully occupies. This applies also to perceptions derived from hearing or smelling.” [United States v. Burns](#), 624 F.2d 95, 100 (10th Cir.), *cert. denied*, 449 U.S. 954 (1980)(citations omitted). “The risk of being overheard by an eavesdropper or betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society.” [Hoffa v. United States](#), 385 U.S. 293, 303 (1966)[*citing Lopez v. United States*, 373 U.S. 427, 465 (1963)(Brennan, J., dissenting)].

4. **Ownership Alone Does Not Automatically Justify REP in an Area or Object.** “While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, ... property rights are neither the beginning nor the end of this ... inquiry.” [United States v. Salvucci](#), 448 U.S. 83, 91 (1980). Thus, “ownership alone does not justify a reasonable expectation of privacy.” [Shamaeizadeh v. Cunigan](#), 338 F.3d 535, 544 (6th Cir. 2003). See *also* [United States v. Angevine](#), 281 F.3d 1130, 1134 (10th Cir.), *cert. denied*, 537 U.S. 845 (2002)(“Although ownership of the items seized is not determinative, it is an important consideration in determining the

existence and extent of a defendant's Fourth Amendment interests")(citation omitted); [United States v. Taketa](#), 923 F.2d 665, 672 (9th Cir. 1991)(noting that "privacy analysis does not turn on property rights"); [Gillard v. Schmidt](#), 579 F.2d 825, 829 (3d Cir. 1978)("Applicability of the Fourth Amendment does not turn on the nature of the property interest in the searched premises, but on the reasonableness of the person's privacy expectation").

5. **Locations Where REP Exists.** Individuals have been found to have REP in a number of different areas and situations. Listed below are some of the more common ones.

- a. **The Body of the Suspect.** The Supreme Court has made a "distinction between physical evidence below the skin as opposed to outside the skin ... regarding the collection of a variety of categories of physical evidence." [United States v. Nicolosi](#), 885 F. Supp. 50, 53 (E.D.N.Y. 1995). Further, it must be remembered that "the obtaining of physical evidence from a person involves a potential Fourth Amendment violation at two different levels - the 'seizure' of the 'person' necessary to bring him into contact with government agents ... and the subsequent search for and seizure of the evidence." [United States v. Dionisio](#), 410 U.S. 1, 8 (1973). Assuming that the "seizure" of the person is lawful, it must then be determined whether REP exists in the area from which the evidence is to be collected.

- 1) **Intrusions Beneath the Skin Constitute a Search.** It is well-established that "a physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable." [Skinner v. Railway Labor Executives' Ass'n.](#), 489 U.S. 602, 616 (1989). As noted by the Supreme Court in [Schmerber v. California](#), 384 U.S. 757 (1966): "Search warrants are ordinarily required for searches of dwellings, and, absent an emergency, no less could be required where intrusions into the human body are concerned.... The importance of informed detached and deliberate determinations of the issue whether or not to invade another's body in search of evidence is indisputable and great." *Id.* at 770. See also [Nicolosi](#), 885 F. Supp. at 55 ("On the other end of the continuum is a blood sample and presumably other internal fluids which could only be obtained by extracting them from the body. Obtaining such samples requires full compliance with Fourth Amendment procedures"). Thus, a Fourth Amendment "search" occurs when evidence is

collected from below the skin of the suspect.

- a) **Blood Sample.** [Schmerber](#), *supra*.
 - b) **Bullet Beneath Skin.** [Winston v. Lee](#), 470 U.S. 753 (1985)(Search occurred when bullet was removed from beneath defendant's skin).
 - c) **Urine Sample.** [Skinner](#), 489 U.S. at 617 (Taking of urine samples is a search "because it is clear that the collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable").
 - d) **Breathalyzer.** *Id.* at 617-618 ("Subjecting a person to a breathalyzer test, which generally requires the production of alveolar or 'deep lung' breath for chemical analysis ... implicates similar concerns about bodily integrity and, like the blood-alcohol test we considered in [Schmerber](#), should also be deemed a search").
 - e) **Fingernail Scrapings.** [Cupp v. Murphy](#), 412 U.S. 291, 295 (1973)(Taking of fingernail scrapings constitutes a search).
 - f) **Saliva Sample.** [United States v. Nicolosi](#), 885 F. Supp. 50, 56 (E.D.N.Y.1995)(holding that a saliva sample is "properly deemed a search under the Fourth Amendment").
- 2) **Intrusions Above the Skin Do Not Constitute Searches.** In [Katz](#), *supra*, the Supreme Court held that "what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Id.* at 351.
- a) **Voice/Handwriting Samples.** "Accordingly, grand jury subpoenas compelling voice samples, [Dionisio](#), 410 U.S. at 15, and handwriting samples, [United States v. Mara](#), 410 U.S. 19, 21-22 (1973), are not 'searches' and therefore do not implicate the Fourth Amendment." [In re Shabazz](#), 200 F. Supp. 2d 578 (D.S.C. 2002). In both cases, the Supreme Court "reasoned that voice and handwriting exemplars are not protected because the Fourth Amendment 'provides no protection for what 'a person knowingly exposes to the public' Like a man's facial characteristics, or handwriting, his voice is

repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world.” [In re Grand Jury Proceedings \(Mills\)](#), 686 F.2d 135, 138 (3d Cir.), cert. denied, 459 U.S. 1020 (1982)(citations omitted).

- b) **Fingerprints.** The same is true of fingerprints, in that “fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search.” [Davis v. Mississippi](#), 394 U.S. 721, 727 (1969)(dicta). See also [In re Grand Jury Proceedings Involving Vickers](#), 38 F. Supp. 2d 159, 164 (D.N.H. 1998)(Holding “respondents do not enjoy a constitutionally protected privacy interest in their fingerprints”).
 - c) **Facial Hair.** Further, an individual has no reasonable expectation of privacy in his facial or head hair. See [In re Grand Jury Proceedings \(Mills\)](#), 686 F.2d 135, 139 (3rd Cir.), cert. denied, 459 U.S. 1020 (1982)(“We conclude that there is no greater expectation of privacy with respect to hair which is on public display than with respect to voice, handwriting or fingerprints.... If fingerprints can be subjected to compelled disclosure by the grand jury without implicating the Fourth Amendment, it follows logically that the hair strands can as well”); [In re Grand Jury Proceedings Involving Vickers](#), 38 F. Supp. 2d 159, 165 (D.N.H. 1998)(“Thus, it follows that the grand jury's request for hair samples, like fingerprints, does not implicate respondents' Fourth Amendment rights”). Of course, an individual will retain an expectation of privacy in bodily hair that is not exposed to the public, such as pubic hair. See [Bouse v. Bussey](#), 573 F.2d 548, 550 (9th Cir. 1977)(Taking of pubic hair sample constituted a search under the Fourth Amendment).
- b. **Vehicles.** Again, an individual's expectation of privacy in a vehicle depends on whether the exterior or interior of the vehicle is being examined. Further, while “a citizen does not surrender all the protections of the Fourth Amendment by

entering an automobile,” [New York v. Class](#), 475 U.S. 106, 112 (1986), an individual has a “reduced expectation of privacy in an automobile, owing to its pervasive regulation.” [Pennsylvania v. Labron](#), 518 U.S. 938, 940 (1996).

- 1) **No Expectation of Privacy in the Exterior of a Vehicle.** There is no expectation of privacy in the outside, or exterior, of a vehicle. As noted by the Supreme Court: “The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a ‘search.’” [Class](#), 475 U.S. at 114 [citing [Cardwell v. Lewis](#), 417 U.S. 583, 588-89 (1975)]. See also [United States v. Rascon-Ortiz](#), 994 F.2d 749, 754 (10th Cir. 1993)(“The undercarriage is part of the car’s exterior, and as such, is not afforded a reasonable expectation of privacy”); [United States v. Muniz-Melchor](#), 894 F.2d 1430 (5th Cir.), cert. denied, 495 U.S. 923 (1990)(Not a search to tap outside of propane tank on a lawfully stopped vehicle); [Cardwell v. Lewis](#), 417 U.S. 583 (1974) (plurality) (not a search to take paint scrapings from a car in a public parking lot and examine its tires).
- 2) **Attaching a Tracking Device to the Exterior of a Vehicle.** The Supreme Court has held that the mere tracking of a vehicle on public streets by means of a similar though less sophisticated device (a beeper) is not a search. [United States v. Knotts](#), 460 U.S. 276, 284-85, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983). But the Court left open the question whether installing the device in the vehicle converted the subsequent tracking into a search. [Id.](#) at 279 n. 2; see also [United States v. Karo](#), 468 U.S. 705, 713-14, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984). The courts of appeals are divided on the issue. The Seventh and Ninth Circuits have held that attaching a tracking device to the exterior of a vehicle is not a search or seizure and need not be supported by any quantum of suspicion. [U.S. v. Garcia](#), 474 F.3d 994 (7th Cir. 2007); [United States v. McIver](#), 186 F.3d 1119, 1127 (9th Cir. 1999). The Fifth Circuit holds that such an intrusion is justified by reasonable suspicion, [United States v. Michael](#), 645 F.2d 252, 256 and n. 11 (5th Cir. 1981) (en banc), while the First, Sixth, and Tenth Circuits require probable cause. [United States v. Moore](#), 562 F.2d 106, 110-12 (1st Cir. 1977); [United States v. Bailey](#), 628 F.2d 938, 944-45 (6th Cir. 1980); [United States v. Shovea](#), 580 F.2d 1382, 1387-88 (10th Cir.

[1978](#)).

- 3) **There May Be An Expectation of Privacy in the Interior of the Vehicle.** “While the interior of an automobile is not subject to the same expectations of privacy that exist with respect to one's home, a car's interior as a whole is nonetheless subject to Fourth Amendment protection from unreasonable intrusions by the police.” [Class](#), 475 U.S. at 114-115. However, “there is no legitimate expectation of privacy ... shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers.” [Texas v. Brown](#), 460 U.S. 730, 740 (1983)(plurality opinion)(citations omitted). See also [Class](#), 475 U.S. at 114 (1986)(In discussing vehicle identification numbers (VIN), Court held “it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile”).
- 4) **Lawful Vehicle Stops -- Passengers Generally Have No Expectation of Privacy.** “A passenger in a car that he neither owns nor leases typically has no standing to challenge a search of the car.” [United States v. Baker](#), 221 F.3d 438, 441-442 (3rd Cir. 2000)(citation omitted). See also [Rakas v. Illinois](#), 439 U.S. 128, 143 (1978)(“There is no legitimacy to a defendant's expectations of privacy where the area searched is in the control of a third party”); [United States v. Barragan](#), 379 F.3d 524, 530 (8th Cir. 2004)(Court note that “mere passenger” had no expectation of privacy in vehicle where passenger's name did not appear on any ownership documents and passenger admitted having no ownership interest vehicle); Of course, a passenger will retain an expectation of privacy in any personal property that he or she has brought into the car with them. See, e.g., [United States v. Welch](#), 4 F.3d 761, 764 (9th Cir. 1993). (While passenger had diminished expectation of privacy in the vehicle, she still maintained expectation of privacy in her purse, because it was “independently the subject of such expectations”); [United States v. Buchner](#), 7 F.3d 1149, 1154 (5th Cir. 1993)(“The owner of a suitcase located in another's car may have a legitimate expectation of privacy with respect to the contents of his suitcase”).

- 5) **Unlawful Vehicle Stops – Passenger’s Right to Challenge a Resulting Search.** A law enforcement officer’s stop of an automobile results in a seizure of both the driver and the passenger(s). Brendlin v. California, 127 S. Ct. 2400 (2007). Thus, If either the stopping of the car, the length of the passenger’s detention thereafter, or the passenger’s removal from it are unreasonable in a Fourth Amendment sense, then the passenger has standing to object to those constitutional violations and to have suppressed any evidence found in the car which is their fruit. Id. at 2408 (citations omitted).
- 6) **Individuals Listed on Rental Agreements Have An Expectation of Privacy in Rental Vehicles.** “A person listed on a rental agreement as an authorized driver has a protected Fourth Amendment interest in the vehicle and may challenge a search of the rental vehicle.” United States v. Walker, 237 F.3d 845, 849 (7th Cir. 2001). See also United States v. Henderson, 241 F.3d 638, 646 (9th Cir. 2000), cert. denied, 532 U.S. 986 (2001) (“Henderson clearly had a reasonable expectation of privacy in the car because he was a lessee”). The driver retains an expectation of privacy in the rental car even if he keeps the car beyond the contract expiration date, unless the rental company has taken affirmative steps to reclaim the vehicle. U.S. v. Henderson, 241 F.3d 638 (9th Cir. 2000) (Eleventh Circuit agrees).
- 7) **The Courts Are Split on Whether an Individual Who is Not Listed on the Rental Agreement has an Expectation of Privacy.** Several circuits have addressed the issue of whether an unauthorized driver has an expectation of privacy in a rental car.
- a) **REP With Permission.** “At least two courts have held that if the driver of a rental car has the permission of the lessee to drive the vehicle, then he has a legitimate possessory interest and accompanying expectation of privacy sufficient to establish standing to attack an unlawful search of the vehicle.” United States v. Little, 945 F. Supp. 79, 83 (S.D.N.Y. 1996), aff’d, 133 F.3d 908 (2d Cir. 1998). See United States v. Muhammad, 58 F.3d 353, 355 (8th Cir. 1995); United States v. Best, 135 F.3d 1223, 1225 (8th Cir. 1998); United States v.

[Kye Soo Lee](#), 898 F.2d 1034, 1038 (5th Cir. 1990), cert. denied, 506 U.S. 1083 (1993)].

- b) **No REP If Not Authorized Driver.** Three circuit courts have reached a different conclusion. "The Fourth, Tenth, and Eleventh Circuits ... have looked solely to the rental agreement, holding that a driver who is not authorized by the rental company to operate the car does not have standing." [United States v. Haywood](#), 324 F.3d 514, 516 (7th Cir. 2003). See [United States v. Wellons](#), 32 F.3d 117, 119 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995); [United States v. Roper](#), 918 F.2d 885, 887-88 (10th Cir. 1990); [United States v. McCulley](#), 673 F.2d 346, 352 (11th Cir.), cert. denied, 459 U.S. 852 (1982).
- c) **One Circuit Applies a Fact-Based Approach.** In [United States v. Smith](#), 263 F.3d 572 (6th Cir. 2001), the Sixth Circuit noted that, "as a general rule, an unauthorized driver of a rental vehicle does not have a legitimate expectation of privacy in the vehicle, and therefore does not have standing to contest the legality of a search of the vehicle." Id. at 586. Nevertheless, the court refused "to adopt a bright line test ... based solely on whether the driver of a rental vehicle is listed on the rental agreement as an authorized driver." Id. Instead, said the court, whether an expectation of privacy exists must be determined by looking at all of the facts of a given case.
- c. **Homes.** An individual has a high expectation of privacy within the confines of his or her home. In fact, the Supreme Court has repeatedly emphasized that the warrantless entry and search of a home is "the chief evil against which the ... Fourth Amendment is directed." [United States v. United States Dist. Court for Eastern Dist. of Mich.](#), 407 U.S. 297, 313 (1972). See also [Silverman v. United States](#), 365 U.S. 505, 511 (1961)("At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion"); [Mincey v. Arizona](#), 437 U.S. 385, 393 (1978)("The Fourth Amendment reflects the wave of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in

enforcement of the criminal law"); [Wilson v. Layne](#), 526 U.S. 603, 610 (1999)("The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home"). "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no." [Kyllo v. United States](#), 533 U.S. 27, 31 (2001)(citations omitted).

1) **Third Party's Home.** The Supreme Court has held that, "in some circumstances a person may have a legitimate expectation of privacy in the house of someone else." [Minnesota v. Carter](#), 525 U.S. 83, 89 (1998). In such cases, the purpose behind the visitor being at the home is the determining factor in whether an expectation of privacy exists.

a) **Overnight Guests and Social Visitors Can Have an Expectation of Privacy.** "A visitor usually lacks a rightful expectation of privacy when present in the home of another - unless the visitor stays overnight." [United States v. Sturgis](#), 238 F.3d 956, 958 (8th Cir.), cert. denied, 534 U.S. 880 (2001)(citing [Carter](#), 525 U.S. at 89-91). See also [Minnesota v. Olson](#), 495 U.S. 91, 96-97 (1990) ("We need go no further than to conclude, as we do, that Olson's status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable"). Similarly, "a social guest's expectation of privacy is constitutionally protected." [United States v. Rhiger](#), 315 F.3d 1283, 1287 (10th Cir. 2003). See also [United States v. Kimoana](#), 383 F.3d 1215, 1221 (10th Cir. 2004)("Overnight guests and joint occupants of motel rooms possess reasonable expectations of privacy in the property on which they are staying"); [United States v. Pollard](#), 215 F.3d 643, 647-48 (6th Cir.), cert. denied, 531 U.S. 999 (2000) (Defendant had reasonable expectation of privacy in premises where he had friendship with homeowner, occasionally spent night at residence, kept some personal belongings there, and was permitted to be in home while owners were absent).

b) **Commercial Visitors Generally Has No**

Expectation of Privacy in a Third Party's Home.

While an "overnight guest" may have a reasonable expectation of privacy in a third party's home, a commercial visitor may not. "A visitor to another's home for commercial purposes retains only a limited privacy interest, because an expectation of privacy in commercial premises is different from, and indeed less than, a similar expectation in an individual's home." [Sturgis](#), 238 F.2d at 958 (internal quotation and citation omitted)... See also [Carter](#), 525 U.S. at 91 (Court held commercial visitor has no expectation of privacy because of "the purely commercial nature of the transaction engaged in ..., the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder"); [Rhiger](#), 3315 F.3d at 1291-92 (Noting "an individual does not possess an expectation of privacy to challenge the search of another's property when he or she is present solely for commercial or business reasons").

- 2) **Hotel/Motel Rooms.** "No less than a tenant of a house, or the occupant of a room in a boarding house, a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures." [Stoner v. California](#), 376 U.S. 483, 490 (1964)(internal citation omitted). See also, [United States v. Gordon](#), 168 F.3d 1222, 1226 (10th Cir.), cert. denied, 527 U.S. 1030 (1999)("An individual may have a reasonable expectation of privacy in a motel room"); [United States v. Nerber](#), 222 F.3d 597, 600 n.2 (9th Cir. 2000)("For Fourth Amendment purposes, a hotel room is treated essentially the same, if not exactly the same, as a home").
 - a) **Establishing an Expectation of Privacy in a Hotel/Motel Room.** In determining whether a defendant established an expectation of privacy in a motel room, courts have examined various factors, including:
 - (1) **Whether "a defendant demonstrate[d] that he was the registered occupant of the room,"** [Gordon](#), 168 F.3d at

1226;

- (2) Whether the defendant “was sharing [the room] with the person to whom the room was registered,” [*Id.*](#);
- (3) Whether the defendant ever checked into the room, [*United States v. Carter*](#), 854 F.2d 1102, 1105-06 (8th Cir. 1988);
- (4) Whether the defendant paid for the room, [*Id.*](#) at 1106;
- (5) Whether the defendant had the ability to control or exclude others’ use of the property, [*Id.*](#) at 1105.

- b) **An Expectation of Privacy in a Hotel/Motel Room Generally Expires at Checkout Time.**
“As a general rule, a defendant’s expectation of privacy in a hotel room expires at checkout time.” [*United States v. Dorais*](#), 241 F.3d 1124, 1129 (9th Cir. 2001). See also, [*United States v. Kitchens*](#), 114 F.3d 29, 31 (4th Cir. 1997); [*United States v. Allen*](#), 106 F.3d 695, 699 (6th Cir.), cert. denied, 520 U.S. 1281 (1997); [*United States v. Rahme*](#), 813 F.2d 31, 34 (2d Cir. 1987). Nonetheless, “a guest may still have a legitimate expectation of privacy even after his rental period has terminated, if there is a pattern or practice which would make that expectation reasonable.” [*Kitchens*](#), 114 F.3d at 32. See also [*Dorais*](#), 241 F.3d at 1129 (“The policies and practices of a hotel may result in the extension past checkout time of a defendant’s reasonable expectation of privacy”); [*United States v. Cunag*](#), 386 F.3d 888, 895 (9th Cir. 2004) (Noting that, “whether a hotel patron retains a reasonable expectation of privacy in his hotel room depends on whether or not management had justifiably terminated the patron’s control of the room through private acts of dominion”)(citation and internal quotations marks omitted).

- 3) **There is Ordinarily No Expectation of Privacy in the Common Areas of Hotels, Motels, and Apartment Buildings.** Six of the seven circuits “that have decided the issue have concluded that tenants do not have a reasonable expectation of privacy in the

common areas of their apartment building.” [United States v. Miravalles](#), 280 F.3d 1328, 1331 (11th Cir. 2002). See, e.g., [United States v. Paradis](#), 351 F.3d 21, 31 (1st Cir. 2003)(Noting defendant had no privacy interest in bag of ammunition left on back porch of building because “he had no expectation of privacy in the common areas of a multi-family building,” which in this case was an apartment building); [United States v. Nohara](#), 3 F.3d 1239, 1241-42 (9th Cir. 1993)(Apartment hallway); [United States v. Concepcion](#), 942 F.2d 1170, 1171-72 (7th Cir. 1991)(Apartment common areas); [United States v. Barrios-Moriera](#), 872 F.2d 12, 14-15 (2d Cir. 1989) (Apartment hallway), overruled on other grounds by [Horton v. California](#), 496 U.S. 128 (1990); [United States v. Eisler](#), 567 F.2d 814, 816 (8th Cir. 1977) (Apartment hallway); [United States v. Cruz Pagan](#), 537 F.2d 554, 558 (1st Cir. 1976). “The only circuit that has recognized a reasonable expectation of privacy in the common areas of an apartment building, at least when the door is locked, is the Sixth Circuit.” [Miravalles](#), 280 F.3d at 1332. See [United States v. Carriger](#), 541 F.2d 545, 550 (6th Cir. 1976) (Apartment common areas).

- d. **Containers.** “The Supreme Court has long recognized that individuals have an expectation of privacy in closed containers....” [United States v. Runyan](#), 275 F.3d 449, 464 (5th Cir. 2001)(citations omitted). See, e.g., [United States v. Ross](#), 456 U.S. 798, 822-23 (1982)(“The Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view”); [United States v. Jacobsen](#), 466 U.S. 109, 114 (1984)(“Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy”); [United States v. Fultz](#), 146 F.3d 1102, 1105 (9th Cir. 1998) (“A person has an expectation of privacy in his or her private, closed containers”).

- 1) **Destroying Expectation of Privacy in a Container Through a Private Search.** While an individual can have a reasonable expectation of privacy in a container, that expectation can be destroyed “if that container was opened and examined by private searchers.” [Runyan](#), 275 F.3d at 465. See also, [Jacobsen](#), 466 U.S. at 119(Holding that “agent’s viewing of what a private party had freely made available for his inspection did not violate the Fourth

Amendment"). "Thus, the police do not engage in a new 'search' for Fourth Amendment purposes each time they examine a particular item found within the container." [Runyan](#), 275 F.3d at 465. This issue is discussed more fully in **EPO #1**.

- 2) **No Expectation of Privacy in Containers That Reveal Their Contents.** As a general rule, "for there to be a reasonable expectation of privacy, the contents of a container should not be apparent without opening." [United States v. Knoll](#), 16 F.3d 1313, 1321 (2d Cir. 1994), cert. denied, 522 U.S. 1118 (1998). See also [United States v. Villarreal](#), 963 F.2d 770, 773 (5th Cir. 1992)("Individuals can manifest legitimate expectations of privacy by placing items in closed, opaque containers **that conceal their contents from plain view**")(emphasis added). "Thus, when a container is 'not closed,' or 'transparent,' or when its 'distinctive configuration ... proclaims its contents,' the container supports no reasonable expectation of privacy and the contents can be said to be in plain view." [United States v. Donnes](#), 947 F.2d 1430, 1437 (10th Cir. 1991).

- e. **Curtilage and "Open Fields"**. Throughout its history, the Supreme Court has stressed "the overriding respect for the sanctity of the home that has been embedded ... since the origins of the Republic." [Oliver v. United States](#), 466 U.S. 170, 178 (1984)(citations omitted). Included within the protections afforded a home are those areas that fall within a home's "curtilage," but not those areas of an individual's property that are considered "open fields." See, e.g., [United States v. Gerard](#), 362 F.3d 484, 487 (8th Cir. 2004)("The Fourth Amendment protects a home and its curtilage - the area immediately surrounding a dwelling house - from unreasonable warrantless searches"); [United States v. Cavely](#), 318 F.3d 987, 995 (10th Cir. 2003)("The protections of the Fourth Amendment may extend beyond the home itself").

- 1) **Curtilage Defined.** "Curtilage" has been defined as "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" [Oliver](#), 466 U.S. at 180. As such, curtilage "has been considered part of the home itself for Fourth Amendment purposes," *id.*, and an individual has a reasonable expectation of privacy in the curtilage surrounding a dwelling. See also [United](#)

[States v. French](#), 291 F.3d 945, 951 (7th Cir. 2002) (Defining a home's "curtilage" as "the area outside the home itself but so close to and intimately connected with the home and the activities that normally go on there that it can reasonably be considered part of the home").

- 2) **Open Fields Defined.** Alternatively, "open fields" have been defined as "any unoccupied or undeveloped area outside of the curtilage." [Id.](#) "No expectation of privacy legitimately attaches to open fields." [Id.](#) The phrase "open fields" is somewhat misleading, in that "an open field need be neither 'open' nor a 'field' as those terms are used in common speech." [Id.](#) So, for example, "a thickly wooded area nonetheless may be an open field as that term is used in construing the Fourth Amendment." [Id.](#)
- 3) **Evaluating Whether Property is Curtilage.** "For most homes, the boundaries of the curtilage will be clearly marked; and the conception defining the curtilage - as the area around the home to which the activity of home life extends - is a familiar one easily understood from our daily experience." [United States v. Dunn](#), 480 U.S. 294, 302 (1987)(citation omitted). This will not always be the case, however, especially in more rural settings. See, e.g., [United States v. Reilly](#), 76 F.3d 1271, 1277 (2d Cir. 1996)("In a modern urban multifamily apartment house, the area within the 'curtilage' is necessarily much more limited than in the case of a rural dwelling subject to one owner's control").
 - a) **Four Factors Are Considered in Determining Whether An Area is Part of a Home's Curtilage.** Accordingly, in [Dunn](#), *supra*, the Supreme Court announced four factors that must be considered when determining whether a given area is part of a home's curtilage. In utilizing these four factors, however, the Court has emphasized to the lower courts that these factors are not to be "mechanically applied," [id.](#) at 301, but are useful "only to the degree that, in any given case, they bear upon the centrally relevant consideration - whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella'".

of Fourth Amendment protection.” [Id.](#)

- (1) **Proximity.** First, the proximity of the area claimed to be curtilage to the home must be considered. Courts have repeatedly refused to fix a specific distance at which curtilage ends. See, e.g., [French](#), 291 F.3d at 952 (“A curtilage line ‘cannot be located merely by taking measurements from some other case or precedent and then by use of a tape measure trying to determine where the curtilage is in a different case’”)[citing [United States v. Redmon](#), 138 F.3d 1109, 1112 (7th Cir. 1998)(en banc), cert. denied, 525 U.S. 1066 (1999)]; [Reilly](#), 76 F.3d at 1277 (“On a large parcel of land, a pond 300 feet away from a dwelling may be as intimately connected to the residence as is the backyard grill of the bloke next door”); [United States v. Van Dyke](#), 643 F.2d 992, 994 (4th Cir. 1981) (“Distance is just one of many factors to be weighed when determining the reach of the curtilage”).
- (2) **Common Enclosure.** Second, courts must consider whether the area in question is included within a single enclosure surrounding the home. “Fencing configurations are important factors in defining the curtilage.” [Dunn](#), 480 U.S. at 301 n.4. These “fencing” configurations may be artificial or natural. See, e.g., [Hart v. Myers](#), 183 F. Supp. 2d 512, 523 (D. Conn. 2002)(“Natural ‘barriers satisfy the requirements of an enclosure’”); [Williams v. Garrett](#), 722 F. Supp. 254, 261 (W.D. Va. 1989)(“Requiring a person to expend resources and sacrifice aesthetics by building a fence in order to obtain protection from unreasonable searches is not required by the constitution”). Typically, the enclosure factor weighs against those who claim infringement of the curtilage

when their land is divided into separate parts by internal fencing.” [Reilly](#), 76 F.3d at 1278. For example, in [Dunn](#), *supra*, there was an internal fence separating the barn from the home. According to the Court, this fence “serve[d] to demark a specific area of land immediately adjacent to the house that is readily identifiable as part and parcel of the house.” [Dunn](#), 480 U.S. at 302. Thus, “the proper focus of this factor is on whether interior fencing clearly demarcates the curtilage.” [United States v. Traynor](#), 990 F.2d 1153, 1158 (9th Cir. 1993). However, “the Supreme Court has rejected a bright line rule that “the curtilage should extend no farther than the nearest fence surrounding a fenced house.” [Hart](#), 183 F. Supp. at 523.

- (3) **Use.** Third, the nature of the uses to which the area is put is a factor that must be taken into account. In [Dunn](#), *supra*, the Court found it “especially significant that the law enforcement officials possessed objective data indicating that the barn was not being used for intimate activities of the home.” [Dunn](#), 480 U.S. at 302. “[T]his factor requires consideration of whether the property is used to ‘harbor those intimate activities associated with domestic life and the privacies of home.’” [Hart](#), 183 F. Supp. at 523 (citation omitted). See, e.g., [Gerard](#), 362 F.3d at 488 (In case involving a detached garage, court noted: “We believe that reasonable officers would expect that the garage was likely to be used for private activities. The garage’s doors were locked, electricity was wired to the garage, and it was close to the farmhouse, which are typical signs of private activities”).

- (4) **Steps Taken to Prevent Observation.** Finally, the steps taken by the resident

to protect the area from observation by people passing by are to be considered in the analysis. For example, "No Trespassing" signs may be significant as an effort to protect the inner areas of a parcel of land from observation. However, this fact is not, in and of itself, dispositive of the curtilage issue. See, e.g., [Oliver](#), 466 U.S. at 183 n.13 ("Certainly the Framers did not intend that the Fourth Amendment should shelter criminal activity wherever persons with criminal intent choose to erect barriers and post "No Trespassing" signs"); [Gerard](#), 362 F.3d at 488 (In finding that garage was not within curtilage of home, court noted that, "[n]o internal fences prevented persons from approaching the garage. Also, Gerard posted no signs excluding strangers from access to the garage. Gerard did nothing to cover the marijuana odor escaping from the vent of the garage. Lastly, the garage was not completely blocked from view of members of the public driving down the street"); [United States v. Roberts](#), 811 F. Supp. 21, 23 (D. Me. 1993) ("No trespassing signs do not confer a reasonable expectation of privacy in activities taking place in otherwise open fields").

4) **Miscellaneous Issues Regarding Curtilage and Open Fields.** The following issues regarding curtilage and open fields have been addressed to varying degrees by a number of different courts.

- a) **Driveways and Walkways.** "[D]riveways that are readily accessible to visitors are not entitled to the same degree of Fourth Amendment protection as are the interiors of defendants' houses." [United States v. Reyes](#), 283 F.3d 446, 465 (2d Cir.), cert. denied, 537 U.S. 822 (2002)(collecting cases). See also [Rogers v. Vicuna](#), 264 F.3d 1, 5 (1st Cir. 2001) (Noting "a person does not have a reasonable expectation of privacy in a driveway that was visible to the occasional passerby")(citation

omitted); [Maisano v. Welcher](#), 940 F.2d 499, 503 (9th Cir. 1991), cert. denied sub nom. Maisano v. IRS, 504 U.S. 916 (1992) (“In order to establish a reasonable expectation of privacy in their driveway, the plaintiffs must support that expectation by detailing the special features of the driveway itself (i.e. enclosures, barriers, lack of visibility from the street) or the nature of activities performed upon it”); [United States v. Smith](#), 783 F.2d 648, 650 (6th Cir. 1986) (No reasonable expectation of privacy in driveway accessible and visible from public highway); [United States v. Ventling](#), 678 F.2d 63, 66 (8th Cir. 1982) (Because “a driveway and portion of the yard immediately adjacent to the front door of the residence can hardly be considered out of public view,” extending privacy protections would not be reasonable).

- (1) **Entry By Law Enforcement Officers Onto Private Property.** “Law enforcement officers may encroach upon the curtilage of a home for the purpose of asking questions of the occupants.” [United States v. Hammett](#), 236 F.3d 1054, 1059 (9th Cir. 2001), cert. denied, 534 U.S. 866 (2001). Accordingly, “[w]hen the police come on to private property to conduct an investigation ... and restrict their movements to places visitors could be expected to go (e.g., walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment.” [United States v. Hatfield](#), 333 F.3d 1189, 1194 (10th Cir. 2003) (citation omitted). *See also* [United States v. Carter](#), 360 F.3d 1235, 1239 (10th Cir. 2004) (No search or seizure occurred where officers drove by the defendant’s house twice, parked nearby, walked up the driveway, and shone their flashlights into a car in the driveway); [United States v. Taylor](#), 90 F.3d 903, 909 (4th Cir. 1996) (“Absent express orders from the

person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned violation of the person's right of privacy, for any one openly and peaceably ... to walk up the steps and knock on the front door of any man's 'castle' ... whether the questioner be a pollster, a salesman, or an officer of the law")(citation omitted).

(2) **Observations Made While Approaching a Person's Front Door.**

Additionally, "officers walking up to the front door of a house can look inside through a partially draped open window without conducting a Fourth Amendment search." [United States v. Garcia](#), 997 F.2d 1273, 1279 (9th Cir. 1993). See also [Taylor](#), 90 F.3d at 909 (Holding that observations by law enforcement officers into a dining room through a window adjacent to front door did not constitute a search within the meaning of the Fourth Amendment because, by "expos[ing] their dining room and its contents to anyone positioned at the front entranceway of their home, the Taylors possessed no reasonable expectation of privacy in the dining room or its openly visible contents").

b) **Officers May Move Around the House in a Good Faith Effort to Contact a Resident.**

Various courts have recognized "that officers must sometimes move away from the front door when they are attempting to contact the occupants of a residence." [Garcia](#), 997 F.2d at 1279. See [United States v. Daoust](#), 916 F.2d 757, 758 (1st Cir. 1990)(Held that, if the front door to the residence is inaccessible, "there is nothing unlawful or unreasonable about going to the back of the house to look for another door, all as part of a legitimate attempt to interview a person"); [United States v. Anderson](#), 552 F.2d 1296, 1300 (8th Cir. 1977) ("We cannot say that the agents' action in proceeding to the rear after receiving no

answer at the front door was so incompatible with the scope of their original purpose that any evidence inadvertently seen by them must be excluded as the fruit of an illegal search"); [Hammitt](#), 236 F.3d at 1060 ("To the extent our previous holdings have failed squarely to resolve this issue, we now make it clear that an officer may, in good faith, move away from the front door when seeking to contact the occupants of a residence"). In such situations, "the subsequent discovery of evidence in plain view does not (generally) violate the Fourth Amendment." [Garcia](#), 997 F.2d at 1279.

- f. **Government Employees May Have An Expectation of Privacy in Government Workspaces.** In [O'Connor v. Ortega](#), 480 U.S. 709 (1987)(plurality opinion), the Supreme Court addressed whether a government employee may establish a reasonable expectation of privacy in a government workspace. In sum, government employees can, and often do, establish expectations of privacy in their government offices, filing cabinets, and computers. See [McGregor v. Greer](#), 748 F. Supp. 881, 888 (D.D.C. 1990) (Reiterating [O'Connor's](#) holding that "a government employee may be entitled to a reasonable expectation of privacy in her office"). As a general rule, "where a public employee has [his or] her own office or desk which co-workers and superiors normally do not enter, and where no agency policy or regulation warns the employee that an expectation of privacy is unreasonable, an expectation of privacy may be reasonable." [Id.](#) Nonetheless, a government employee's expectation of privacy is limited by the "operational realities of the workplace," [O'Connor](#), 480 U.S. at 717, and "whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis." [Id.](#) at 718. In determining whether a government employee has a reasonable expectation of privacy in his or her workspace, courts have utilized a variety of factors. Among the most important are the following:

- 1) **Prior Notice to the Employee May Destroy an Expectation of Privacy.** "In general, government employees who are notified that their employer has retained rights to access or inspect information stored on the employer's computers can have no reasonable expectation of privacy in the information stored there." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*,

Computer Crime and Intellectual Property Section, Criminal Division, Department of Justice, at 41 (March 2001). This is consistent with the Supreme Court's holding in [O'Connor](#) that an employee's expectation of privacy can be reduced through "legitimate regulation." [O'Connor](#), 480 U.S. at 717. See, e.g., [United States v. Thorn](#), 375 F.3d 679, 683 (8th Cir. 2004)(Noting the defendant "did not have any legitimate expectation of privacy with respect to the use and contents of his [government] computer," because he was "fully aware of the computer-use policy, as evidenced by his written acknowledgment of the limits imposed on his computer-access rights in 2000"); [United States v. Simons](#), 206 F.3d 392, 398 (4th Cir. 2000)(Where "policy placed employees on notice that they could not reasonably expect that their Internet activity would be private," the employee "did not have a legitimate expectation of privacy with regard to the record or fruits of his Internet use").

- 2) **Common Practices and Procedures May Destroy an Expectation of Privacy.** In [O'Connor](#), the Supreme Court recognized that "public employees' expectations of privacy in their offices, desks, and file cabinets ... may be reduced by virtue of actual office practices and procedures" [O'Connor](#), 480 U.S. at 717. See also [Gillard v. Schmidt](#), 579 F.2d 825, 829 (3rd Cir. 1978)(Holding that "an employer may conduct a search in accordance with a regulation or practice that would dispel in advance any expectations of privacy")(citation omitted). Alternatively, common office practices and procedures may permit a government employee to establish an expectation of privacy in an area where one would otherwise not exist. See, e.g., [United States v. Speights](#), 557 F.2d 362, 364 (3rd Cir. 1977) (Search of locker impermissible where, *inter alia*, "no regulation and no police practice" existed to justify the search); [United States v. Donato](#), 269 F. Supp. 921, 923 (E.D. Pa.), *aff'd*, 379 F.2d 288 (3rd Cir. 1967) (Search of a locker maintained by an employee of the United States Mint upheld because, among other things, the locker was "regularly inspected by the Mint security guards for sanitation purposes"); [Shaffer v. Field](#), 339 F. Supp. 997, 1003 (C.D. Cal. 1972), *aff'd*, 484 F.2d 1196 (9th Cir. 1973)(Search of a police officer's locker upheld in part because three previous

searches had been conducted in the past); [United States v. Taketa](#), 923 F.2d 665, 673 (9th Cir. 1991) (Holding that government employee had a reasonable expectation of privacy in his office because, *inter alia*, the office was "not open to the public and was not subjected to regular visits of inspection by DEA personnel"); [Schowengerdt v. United States](#), 944 F.2d 483, 488 (9th Cir. 1991) (Holding no reasonable expectation of privacy in office or credenza due to "extremely tight security procedures," to include "frequent scheduled and random searches by security guards").

- 3) **Openness and Accessibility May Destroy an Expectation of Privacy.** Courts will often look to the openness or accessibility of a workspace to determine whether an expectation of privacy can be sustained. Among the factors that are considered are "the employee's relationship to the item seized; whether the item was in the immediate control of the employee when it was seized; and whether the employee took actions to maintain his privacy in the item." [United States v. Angevine](#), 281 F.3d 1130, 1134 (10th Cir.), cert. denied, 537 U.S. 845 (2002). The more accessible the item or area is to others, the less likely it is an individual employee's claim of privacy would be accepted. See, e.g., [Thorn](#), 375 F.3d at 684 (Employee's reasonable expectation of privacy in office, desk and filing cabinet "was limited in scope because other DCSE employees had keys that allowed them to access the office and the contents of the desk and cabinets"). The more the item or area in question was given over to an employee's exclusive use, the more likely an expectation of privacy would be found. As a general rule, "where a public employee has his or her own office or desk which co-workers and superiors normally do not enter, and where no agency policy or regulation warns the employee that an expectation of privacy is unreasonable, an expectation of privacy may be reasonable." [McGregor](#), 748 F. Supp. at 888. Offices that are "continually entered by fellow employees and other visitors during the workday for conferences, consultations, and other work-related visits ... may be so open to fellow employees or the public that no expectation of privacy is reasonable." [O'Connor](#), 480 U.S. at 717-718 (plurality). "Ordinarily, business

premises invite lesser privacy expectations than do residences.” [Vega-Rodriguez v. Puerto Rico Telephone Company](#), 110 F.3d 174, 178 (1st Cir. 1997)[citing [G.M. Leasing Corp. v. United States](#), 429 U.S. 338, 353 (1977)]. Where areas are, by their very nature, “open” and “public,” no reasonable expectation of privacy can exist in that area. See [Thompson v. Johnson County Community College](#), 930 F. Supp. 501, 507 (D. Kan. 1996)(“Security personnel and other college employees, including maintenance and service personnel, had unfettered access to this storage room. Consequently, defendants argue that the open, public nature of the security personnel locker area defeats any reasonable expectation of privacy in this area. The court agrees”). For example, where an unlocked desk or credenza was located in an “open, accessible area,” no reasonable expectation of privacy was found to exist. [O’Bryan v. KTVI Television](#), 868 F. Supp. 1146, 1159 (N.D. Iowa 1994). Nonetheless, the existence of a master key will not defeat an employee’s expectation of privacy in his or her office. [Taketa](#), 923 F.2d at 673 (“Furthermore, the appellants correctly point out that allowing the existence of a master key to overcome the expectation of privacy would defeat the legitimate privacy interest of any hotel, office, or apartment occupant”). Nor does an employee’s failure to consistently shut and lock the office door automatically sacrifice any expectation of privacy in that area. [Id.](#) (“Nor was the expectation of privacy defeated by O’Brien’s failure to shut and lock his doors at all times”). Just because others may be permitted access to an employee’s office does not automatically destroy the employee’s privacy expectation.

- 4) **Position of the Employee May Destroy an Expectation of Privacy.** In determining whether a reasonable expectation of privacy exists, courts will consider the position occupied by the employee who was the subject of the workplace search. This is especially true where the subject of the search is a law enforcement officer. Law enforcement officers do not lose their Constitutional rights by virtue of accepting their position. [Garrity v. State of New Jersey](#), 385 U.S. 493, 500 (1967)(Law enforcement officers “are not relegated to a watered-down version

of Constitutional rights"). Nonetheless, there is a "substantial public interest in ensuring the appearance and actuality of police integrity," in that "a trustworthy police force is a precondition of minimal social stability in our imperfect society." [Biehunik v. Felicetta](#), 441 F.2d 228, 230 (2d Cir. 1971). This "interest in police integrity ... may justify some intrusions on the privacy of police officers which the Fourth Amendment would not otherwise tolerate." [Kirkpatrick v. City of Los Angeles](#), 803 F.2d 485, 488 (9th Cir. 1986). See, e.g., [Biehunik](#), 441 F.2d at 231 (Court noted, "policemen, who voluntarily accept the unique status of watchman of the social order, may not reasonably expect the same freedom from governmental restraints which are designed to ensure his fitness for office as from similar governmental actions not so designed"); [Sheppard v. Beerman](#), 18 F.3d 147, 152 (2d Cir. 1994)(Law clerk had no reasonable expectation of privacy in desk based upon the unique "working relationship between a judge and her clerk").

- 5) **An Employee May Waive an Expectation of Privacy.** Occasionally, a government employee may actually waive his or her expectation of privacy as a precondition of receiving a certain benefit from their employer. For example, in [American Postal Workers Union v. United States Postal Service](#), 871 F.2d 556 (6th Cir. 1989), postal employees were eligible to receive personal lockers at their postal facility. Before being allowed to do so, however, each employee had to sign a waiver that noted the locker was "subject to inspection at any time by authorized personnel." *Id.* at 557. Further, the administrative manual of the Postal Service noted that all property provided by the Postal Service was "at all times subject to examination and inspection by duly authorized postal officials in the discharge of their official duties." *Id.* Finally, the collective bargaining agreement for these employees "provided for random inspection of lockers under specified circumstances." *Id.* As noted by the court: "In light of the clearly expressed provisions permitting random and unannounced locker inspections under the conditions described above, the collective class of plaintiffs had no reasonable expectation of privacy in their respective lockers that was protected by the Fourth Amendment." *Id.* at 560.

g. **There is No Expectation of Privacy in Abandoned**

Property. Abandoned property is not subject to Fourth Amendment protection. [Abel v. United States](#), 362 U.S. 217, 241 (1960). Accordingly, an individual does not have a reasonable expectation of privacy in property that he or she has abandoned. See, e.g., [United States v. Tugwell](#), 125 F.3d 600, 602 (8th Cir. 1997), *cert. denied*, 522 U.S. 1061 (1998) (“A warrantless search of abandoned property is constitutional because ‘any expectation of privacy in the item searched is forfeited upon its abandonment’”). “The test for abandonment is whether an individual has retained any reasonable expectation of privacy in the object. This determination is to be made by objective standards. . . An expectation of privacy is a question of intent which may be inferred from words spoken, acts done, or other objective facts.” [United States v. Rem](#), 984 F.2d 806, 810 (7th Cir.), *cert. denied*, 510 U.S. 913 (1993). See also [United States v. Garzon](#), 119 F.3d 1446, 1449 (10th Cir. 1997)(Same) “[T]he individual is treated as having abandoned an object if it would be unreasonable in the circumstances for the person to have an expectation of privacy with respect to that object.” [United States v. Burbage](#), 365 F.3d 1174, 1178 (10th Cir. 2004).

- 1) **There are Two General Means of Abandoning Property.** As a general rule, abandonment takes place when an individual relinquishes any expectation of privacy in an object, either through word or deed. See [United States v. Cofield](#), 272 F.3d 1303, 1306 (11th Cir. 2001) (“An individual who abandons or denies ownership of personal property may not contest the constitutionality of its subsequent acquisition by the police”).
 - a) **Abandonment May Occur Through a Denial of Ownership.** An individual may “abandon” an expectation of privacy in an object by denying ownership of the object. See, e.g., [United States v. Fulani](#), 368 F.3d 351, 354 (3rd Cir. 2004)(Where defendant “disclaim[ed] ownership of every bag located in the overhead rack, including the one that bore his name on it,” he had “abandoned ownership in his bag, effectively waiving his right to bar its search”); [Burbage](#), 365 F.3d at 1178 (“By affirmatively denying to [the officer] that he owned the backpack, Defendant lost any objectively reasonable expectation of privacy in the backpack as a whole. To deny ownership

is to announce to the world, 'you want it, you can have it, as far as I'm concerned'"); [United States v. Dillard](#), 78 Fed. Appx. 505, 510 (6th Cir. 2003) (unpublished) ("When a person has disclaimed ownership of a discarded item or container, courts have repeatedly held that the person has no legitimate expectation of privacy in the item or container and has thus abandoned it"); [United States v. Caballero-Chavez](#), 260 F.3d 863, 867 (8th Cir. 2001) ("Given the defendants' repeated disclaimers, the district court's finding that they abandoned any interest in Room 222 and its contents is not clearly erroneous"); [United States v. McDonald](#), 100 F.3d 1320, 1327 (7th Cir. 1996), cert. denied, 520 U.S. 1258 (1997) (Abandonment through disclaimer occurred when defendant "denied ownership both when [the officer] directly asked her whether she owned the suspect bags and collectively asked all the bus passengers if anyone owned the luggage in question"); [United States v. Han](#), 74 F.3d 537, 543 (4th Cir.), cert. denied, 517 U.S. 1239 (1996) ("Denial of ownership ... constitutes abandonment")(citation omitted).

NOTE: In these types of situations, abandonment is proper even where a law enforcement officer subjectively knows or believes that the suspect possessed or owned the property in question. See, e.g., [Fulani](#), 368 F.3d at 355 (Where defendant "refuse[d] to claim luggage with his nametag on three separate occasions," court determined "he no longer ha[d] a reasonable expectation of privacy in his luggage"); [Han](#), 74 F.3d at 545 ("Whether the officers knew that Han owned the bag is irrelevant. The constitutional property right belonged to Han, and his abandonment of that right did not depend on whether the officers knew that it existed") [United States v. Ruiz](#), 935 F.2d 982, 984 (8th Cir. 1991)(Officers may reasonably believe that a suspect's disclaimer of an interest in luggage is an abandonment of his privacy interest, even

if they have other evidence of possession).

b) **Abandonment May Occur Through the Discarding of an Object.** An individual may also “abandon” an expectation of privacy in an object by discarding it. See, e.g., [United States v. Bradshaw](#), 102 F.3d 204, 213 (6th Cir. 1996), cert. denied, 520 U.S. 1178 (1997) (Defendant abandoned property when, “while fleeing, [he] discarded the pill bottles” containing crack cocaine); [United States v. Segars](#), 31 F.3d 655, 658 (8th Cir. 1994), cert. denied, 513 U.S. 1099 (1995) (Abandonment occurred when defendant, “confronted by police officers ... dropped the package, backed away from the apartment door and attempted to flee”); [United States v. Trimble](#), 986 F.2d 394, 398 (10th Cir.), cert. denied, 508 U.S. 965 (1993) (Abandonment occurred when the defendant “removed an amber vial from his pants pocket and attempted to drop it to the ground”).

2) **Abandonment May Not Be Caused By Police Misconduct.** An individual’s abandonment of certain property may be found involuntary when it is preceded by unlawful police misconduct. [Cofield](#), 272 F.3d at 1307. See also [McDonald](#), 100 F.3d at 1328 (“An abandonment that results from police misconduct is not valid”); [United States v. Washington](#), 146 F.3d 536, 537 (8th Cir. 1998), cert. denied, 531 U.S. 1015 (2000) (“The general principle is, ‘if an illegal search taints a subsequent act of abandonment, evidence acquired after the abandonment ought to be suppressed as the fruit of the unlawful search’”) (citation omitted); [Fulani](#), 368 F.3d at 355 (Same).

NOTE: However, for the abandonment to be considered involuntary due to police misconduct, there must be a nexus between the misconduct and the abandonment. For example, where the abandonment was the direct result of an unlawful seizure, the abandonment may be found to be involuntary. See, e.g., [United States v. Lewis](#), 921 F.2d 1294, 1302 (D.C. Cir. 1990) (“An abandonment may be involuntary, and thus invalid, where it results directly from police

misconduct, such as an illegal search or seizure product of an unlawful seizure”). *See also* [United States v. Gilman](#), 684 F.2d 616, 620 (9th Cir. 1982)(“There must be a nexus between the allegedly unlawful police conduct and abandonment of property if the challenged evidence is to be suppressed”); [United States v. Boone](#), 62 F.3d 323, 326 (10th Cir.), *cert. denied*, 516 U.S. 1014 (1995) (“While it is true that a criminal defendant’s voluntary abandonment of evidence can remove the taint of an illegal stop or arrest, it is equally true that for this to occur, the abandonment must be truly voluntary and not merely the product of police misconduct”)(citation omitted); [United States v. Leshuk](#), 65 F.3d 1105, 1111 (4th Cir. 1995)(Noting that, “although a person does not voluntarily abandon property when the abandonment results from police misconduct,” suppression not required because investigative stop of defendant was lawful”).

- h. **Garbage.** When analyzing the search and seizure of garbage, the location of the garbage at the time of the seizure is critical....
- 1) **There is an Expectation of Privacy in Garbage Inside the Home.** An individual would clearly have a reasonable expectation of privacy in garbage located inside their home. *See* [United States v. Kramer](#), 711 F.2d 789, 793 (7th Cir.), *cert. denied*, 464 U.S. 962 (1983)(“We do not doubt ... that had the police broken into the defendant’s house and removed the records from a waste paper basket in defendant’s bedroom, the records would not be admissible as evidence against him, even if all that was in the waste-paper basket was garbage”); [United States v. Certain Real Property Located at 987 Fisher Road](#), 719 F. Supp. 1396, 1405 (E.D. Mich. 1989)(“A reasonable expectation of privacy in garbage would be at its greatest level when the garbage is still being accumulated in the home”). However, when the garbage has been removed from the home, different issues arise regarding the warrantless search and seizure of garbage.
 - 2) **There is No Expectation of Privacy in Garbage On the Curb of a Public Street.** “The warrantless

search and seizure of the garbage bags left at the curb outside [a defendant's] house would violate the Fourth Amendment only if [the defendant] manifested a subjective expectation of privacy in their garbage that society accepts as objectively reasonable." [California v. Greenwood](#), 486 U.S. 35, 39 (1988). When garbage is placed on the curb of a public street, it is "readily accessible to animals, children, scavengers, snoops, and other members of the public." [Id.](#) at 40 (citation omitted)(internal footnotes omitted). Further, placement of the garbage in this location is done for the specific purpose of giving it to a third party (i.e., the trash collector), who may himself choose to examine its contents. "Accordingly, having deposited their garbage 'in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it,' [an individual] could have had no reasonable expectation of privacy in the inculpatory items that they discarded." [Id.](#) at 40-41 (internal citation omitted).

- 3) **There May Be An Expectation of Privacy in Garbage Located Within the Curtilage of a Home.** When garbage is located outside a home, but still within the home's curtilage, a different issue than that addressed in [Greenwood](#) is presented.

- a) **There is No Bright-Line Rule That Garbage of Curtilage is Protected By the Fourth Amendment.** Initially, it should be noted that there is no "bright-line" rule that garbage located within the curtilage of a home is protected by the Fourth Amendment. See [United States v. Shanks](#), 97 F.3d 977, 979 (7th Cir. 1996), cert. denied, 519 U.S. 1135 (1997)(In discussing issue of garbage located on curtilage, court noted, "mere intonation of curtilage does not end the inquiry"); [United States v. Long](#), 176 F.3d 1304, 1308 (10th Cir.), cert. denied, 528 U.S. 921 (1999) ("Whether the officers violated the Fourth Amendment does not depend solely on curtilage. Defendant must still show that he had a reasonable expectation of privacy in the trash bags"). Instead, when analyzing these types of situations, courts typically look at the "public access" to the garbage to determine

whether the warrantless search and seizure of garbage complies with the Fourth Amendment. See, e.g., [United States v. Comeaux](#), 955 F.2d 586, 589 (8th Cir.), cert. denied, 506 U.S. 845 (1992) ("We believe that the 'proper focus under [Greenwood](#) is whether the garbage was readily accessible to the public so as to render any expectation of privacy objectively unreasonable") (citation omitted).

- b) **Generally, a Person's Reasonable Expectation of Privacy Increases the Closer the Garbage is to the Home.** As a general rule, an individual's reasonable expectation of privacy "will increase as the garbage gets closer to the garage or house." [United States v. Hedrick](#), 922 F.2d 396, 400 (7th Cir.), cert. denied, 502 U.S. 847 (1991). Thus, "garbage bags close to home – in a garage waiting to be set out by the curbside, within the curtilage, or in a back porch – can engender privacy expectations." [Certain Real Property Located at 987 Fisher Road](#), 719 F. Supp. at 1404. See also [Hedrick](#), 922 F.2d at 400 ("Garbage cans placed next to the house or the garage are not so accessible to the public that any privacy expectations are objectively unreasonable").
- c) **"Readily Accessible" Garbage May Not Be Protected, Even Though Within the Home's Curtilage.** Alternatively, "where ... the garbage is readily accessible from the street or other public thoroughfares, an expectation of privacy may be objectively unreasonable because of the common practice of scavengers, snoops, and other members of the public in sorting through garbage." [Hedrick](#), 922 F.2d at 400. In such cases, the garbage may be seized without a warrant even though a technical trespass onto the curtilage has ensued. See, e.g., [Kramer](#), 711 F.2d at 794 (Seizure of garbage permissible even though "it was necessary for the police to trespass a few feet upon the outer edge of his front yard either by reaching across the fence into the air space above the yard or by stepping across the fence onto the yard"); [Hedrick](#), 922 F.2d at

400 (Court held garbage was "readily accessible to public" and seizure was permissible even though located on defendant's curtilage because "distance between the garbage cans and the public sidewalk was relatively short, the garbage was collected by the garbage service from that location, and the garbage cans were clearly visible from the sidewalk"); [Shanks](#), 97 F.3d at 980 (Seizure of garbage from curtilage permissible where "garbage cans ... were readily accessible and visible from a public thoroughfare, the alley, and because it is common for scavengers to snoop through garbage cans found in such alleys"); [Comeaux](#), 955 F.2d at 589 (Seizure of garbage from curtilage permissible where garbage "was readily accessible to the public"); [Certain Real Property Located at 987 Fisher Road](#), 719 F. Supp. at 1404 (Seizure of garbage impermissible where garbage was located "against the back wall of the house, hidden from view of ordinary pedestrians passing by the front of the house").

- i. **Canine Sniffs.** The use of a canine to sniff a container, such as luggage, located in a public place, does not intrude upon a reasonable expectation of privacy and is not considered a "search" for purposes of the Fourth Amendment. See [United States v. Place](#), 462 U.S. 696, 707 (1983); [Illinois v. Caballes](#), ___ U.S. ___, 125 S. Ct. 834, 848 (2005) ("A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment"). While "a passenger has a reasonable expectation of privacy that the contents of his luggage will not be exposed absent consent or a search warrant," the passenger's reasonable expectation of privacy "does not extend to the airspace around the luggage." [United States v. Daniel](#), 982 F.2d 146, 150-151 (5th Cir. 1993)(internal citation and quote omitted). See also [United States v. Gant](#), 112 F.3d 239, 241 (6th Cir. 1997)(Noting "a passenger on a common carrier has no reasonable expectation of privacy in the exterior of his luggage or the airspace surrounding it").
- j. **Sensory Enhancements.** The lawfulness of using devices to enhance a law enforcement officer's senses generally

turns upon (1) the sophistication of the device, and (2) whether the activity that was viewed occurred in public or in private. See [Kyllo v. United States](#), 533 U.S. 27, 34 (2001) (“We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical ‘intrusion into a constitutionally protected area,’ constitutes a search - at least where (as here) the technology in question is not in general public use”)(internal citation omitted). Some specific examples of traditional devices are listed below.

- 1) **Binoculars and Telescopes.** As a general rule, the use of binoculars and telescopes to observe public conduct does not turn the surveillance into a search. See, e.g., [United States v. Lace](#), 669 F.2d 46, 51 (2d Cir.), cert. denied, 459 U.S. 854 (1982); [United States v. Allen](#), 633 F.2d 1282, 1290-91 (9th Cir. 1980); [United States v. Minton](#), 488 F.2d 37, 38 (4th Cir. 1973), cert. denied, 416 U.S. 936 (1974). However, where the conduct being observed is taking place inside a person’s residence, “the use of vision enhancing devices can taint an otherwise valid surveillance of the interior of a home when the devices allow the observer to view not only activities the homeowner should realize might be seen by unenhanced viewing but also the details of activities the homeowner legitimately expects will not be observed.” [United States v. Whaley](#), 779 F.2d 585, 591 (11th Cir. 1986), cert. denied, 479 U.S. 1055 (1987). See also [United States v. Taborda](#), 635 F.2d 131, 138-139 (2d Cir. 1980) (“The vice of telescopic viewing into the interior of a home is that it risks observation not only of what the householder should realize might be seen by unenhanced viewing, but also of intimate details of a person’s private life, which he legitimately expects will not be observed either by naked eye or enhanced vision”).
- 2) **Flashlights and Searchlights.** The use of flashlights and searchlights for illumination does not constitute a search. See [United States v. Lee](#), 274 U.S. 559, 563 (1927)(Searchlight); [Texas v. Brown](#), 460 U.S. 730, 740 (1983)(In upholding use of flashlight, Court noted, “numerous other courts have agreed that the use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection”).

- 3) **Thermal Imaging.** In [Kyllo v. United States](#), 533 U.S. 27 (2001), the Supreme Court held that the use of thermal imaging to detect the heat emanating from a residence constituted a “search” under the Fourth Amendment. Because thermal imaging is a technology that is “not in general public use,” to use this type of device to obtain information about the inside of a residence “that would previously have been unknowable without physical intrusion” without first obtaining a warrant violates the Fourth Amendment. [Id.](#) at 40, *see also* [United States v. Huggins](#), 299 F.3d 1039, 1044 n.5 (9th Cir.), cert. denied, 537 U.S. 1079 (2002) (“the quantum of probable cause necessary to justify a thermal imaging search does not differ from that necessary to justify a physical search.”).
- 4) **Aerial Surveillance.** The use of overflights to detect criminal activity is common in law enforcement. When conducting overflights, law enforcement officers may operate in navigable airspace to the same extent that a private person could. In such situations, “the Fourth Amendment ... does not require the police traveling in the public airways ... altitude to obtain a warrant in order to observe what is visible to the naked eye.” [California v. Ciraolo](#), 476 U.S. 207, 215 (1986). *See also* [Florida v. Riley](#), 488 U.S. 445, 451 (1989)(Where observations were made by helicopter, viewing was lawful, in that “any member of the public could legally have been flying over Riley’s property in a helicopter at the altitude of 400 feet and could have observed Riley’s greenhouse”).
- a) **Title 49 U.S.C. § 40103.** Section 40103 of Title 49 recognizes that “a citizen of the United States has a public right of transit through the navigable airspace.”
- b) **14 C.F.R. 91.119.** Section 91.119 provides the minimum safe altitudes for operation of aircraft, including helicopters. These regulations define where the public may operate in airspace, which further define where a law enforcement officer may go during an overflight.
- (1) **Fixed-Wing Aircraft (Congested Areas).** Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an

altitude of **1,000 feet** above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

- (2) **Fixed-Wing Aircraft (Uncongested Areas).** An altitude of **500 feet** above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.
- (3) **Helicopters.** Helicopters may be operated at less than the minimums prescribed above for fixed-wing aircraft, if the operation is conducted without hazard to persons or property on the surface.

k. **Mail.** “It has long been held that first-class mail such as letters and sealed packages subject to letter postage – as distinguished from newspapers, magazines, pamphlets, and other printed matter - is free from inspection by postal authorities, except in the manner provided by the Fourth Amendment.” [United States v. Van Leeuwen](#), 397 U.S. 249, 251 (1970). See also [Jacobsen](#), 466 U.S. at 114 (“Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable”); [United States v. Ganser](#), 315 F.3d 839, 842-43 (7th Cir. 2003)(“Individuals have a Fourth Amendment right to be free from unreasonable searches and seizures of items they place in the mail”)(citations omitted).

- 1) **First-Class Mail.** First-class mail is protected by [Title 39 U.S.C. § 3623\(d\)](#), which provides:

*The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. **No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.***

- 2) **First-Class Mail – Defined.** First-Class Mail includes all personal correspondence, all bills and statements of accounts, all matter sealed or otherwise closed against inspection, and matter wholly or partly in writing or typewriting.
- 3) **Mail Other Than First-Class.** In cases involving mail other than first-class mail, a law enforcement officer seeking to search the contents must comply with Postal Regulations.
- 4) **Detention of Mail.** Like the detention of any other “container,” mail may be detained only upon a showing of reasonable suspicion. See [Van Leeuwen](#), 397 U.S. at 252-253. See also [Ganser](#), 315 F.3d at 843 (holding that “upon reasonable suspicion that the package contains contraband, law enforcement authorities may detain the package for a reasonable length of time while investigating the package”) (citation omitted).
- 5) **No Expectation of Privacy in the Outside of Mail.** “There is no reasonable expectation of privacy with regard to the outside of a letter.” [United States v. DePoli](#), 628 F.2d 779, 786 (2d Cir. 1980)[citing [United States v. Leonard](#), 524 F.2d 1076, 1087 (2d Cir. 1975), cert. denied, 425 U.S. 958 (1976)]. See also [United States v. Hinton](#), 222 F.3d 664, 675 (9th Cir.), cert. denied, 529 U.S. 1056 (2000)(“There is no expectation of privacy in the addresses on a package, regardless of its class”); [United States v. Huie](#), 593 F.2d 14, 15 (5th Cir. 1979); [United States v. Choate](#), 576 F.2d 165, 182 (9th Cir.), cert. denied, 439 U.S.

953 (1978)].

- 6) **Mail “Covers” or “Watches.”** [“Title 39, Section 233.3](#) of the Code of Federal Regulations, regulates the use of ‘mail covers.’” [Hinton](#), 222 F.3d at 674. In sum, a mail “cover” or “watch” simply “entails asking the post office to specifically watch for a particular address and, if anything comes in for that address, to pull it out of the mail stream and notify the postal inspectors. The postal inspectors then decide whether to pursue anything further or simply return it to the mail stream.” [United States v. Glover](#), 104 F.3d 1570, 1575 n.1 (10th Cir. 1997). This type of investigative tool has repeatedly been found valid under the Fourth Amendment, so long as the mail isn’t detained for an unreasonable amount of time. See, e.g., [Lustiger v. United States](#), 386 F.2d 132, 139 (9th Cir. 1967), cert. denied, 390 U.S. 951 (1968)(“The Fourth Amendment does not preclude postal inspectors from copying information contained on the outside of sealed envelopes in the mail, where no substantial delay in the delivery of the mail is involved”).

NOTE: Where a law enforcement officer violates the postal regulations regarding “mail covers,” it will typically not result in suppression of any evidence that is obtained as a result of the violation. As one court has noted: “Suppression is not the appropriate remedy for a failure to follow agency regulations.” [Hinton](#), 222 F.3d at 674.

C. EPO #3: IDENTIFY APPROPRIATE ACTIONS THAT MAY BE TAKEN WHEN REASONABLE SUSPICION EXISTS

1. **General Rule - “Unreasonable Seizures” Are Forbidden.** As noted previously, “the Fourth Amendment forbids searches and seizures that are unreasonable.” [Terry v. Ohio](#), 392 U.S. 1, 9 (1968). Of course, not all personal interactions between law enforcement officers and citizens involve “seizures” of persons under the Fourth Amendment. [Florida v. Bostick](#), 501 U.S. 429, 434 (1991)(citation omitted). For example, some encounters are purely consensual. In these situations, “the encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.” *Id.* See also [Brower v. County of Inyo](#), 489 U.S. 593, 596 (1989) and [Terry](#), 392 U.S. at 19 n.16. For that reason, it is important for a law enforcement officer to understand exactly when

an individual is “seized” for purposes of the Fourth Amendment.

2. **When is a Person “Seized” Under the Fourth Amendment?**

Generally speaking, a person is seized under the Fourth Amendment when, based on the totality of the circumstances, a reasonable person would not feel free to leave or otherwise terminate the encounter based upon a law enforcement officer’s application of physical force (however slight) or show of authority. [California v. Hodari](#), 499 U.S. 621 (1991); [Brower v. County of Inyo](#), 489 U.S. 593 (1989); [Michigan v. Chesternut](#), 486 U.S. 567 (1988); and [Florida v. Bostick](#), 501 U.S. 429 (1991); [United States v. Brown](#), 410 F.3d 588, 594 (4th Cir. 2005) (“We are mindful of the general rule that a seizure ‘requires either physical force ... or, where that is absent, submission to the assertion of authority’”(citation omitted); [United States v. Spence](#), 397 F.3d 1280, 1283 (10th Cir. 2005) (“A seizure occurs only when an officer, by means of physical force or show of authority, in some way restrains the liberty of a citizen”).

NOTE: “The Supreme Court has formulated two approaches for determining whether a person has been ‘seized’ within the meaning of the Fourth Amendment.” [United States v. Jerez](#), 108 F.3d 684, 689 (7th Cir. 1997). “The first of these approaches is employed when the police approach an individual in a place such as an airport, train terminal or on the street,” [id.](#), and is discussed above. “The second approach articulated by the Supreme Court applies when the police approach an individual in a confined space such as a bus.” [Id.](#) The Supreme Court has repeatedly discussed the seizure of persons in the context of encounters that occur on buses. See, e.g., [Bostick](#), *supra*. In these situations, “the traditional rule, which states that a seizure does not occur so long as a reasonable person would feel free ‘to disregard the police and go about his business,’ is not an accurate measure of the coercive effect of a bus encounter. A passenger may not want to get off a bus if there is a risk it will depart before the opportunity to reboard. A bus rider’s movements are confined in this sense, but this is the natural result of choosing to take the bus; it says nothing about whether the police conduct is coercive.” [United States v. Drayton](#), 536 U.S. 194, 201-02 (2002) (citation omitted). Instead, in a “bus encounter” type situation, “[t]he proper inquiry ‘is whether a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.’” [Id.](#) at 202 (citation omitted). At least one court has extended this rule to cover contacts that occur between police officers and motel occupants. See [Jerez](#), 108 F.3d at 689-90.

3. **When is Property “Seized” Under the Fourth Amendment?**

Alternatively, “a ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” [Jacobsen](#), 466 U.S. at 113 (footnote omitted).

NOTE: When law enforcement officers move a person’s property, a question arises as to how far they can go before a “seizure” of the property occurs. [United States v. Gomez](#), 312 F.3d 920, 923-24 (8th Cir. 2002) (finding “minimal interference with Gomez’s possessory interest” and holding no seizure occurred when a drug interdiction officer at a U.S. Postal Service facility moved a package to a command center twenty yards from a conveyor belt in a sorting area); [United States v. Harvey](#), 961 F.2d 1361, 1363-64 (8th Cir. 1992) (holding no seizure occurred when police removed luggage from a bus’s overhead luggage compartment to the aisle below to subject the luggage to a drug-sniffing dog). “[C]ourts must focus on three factors when considering whether law enforcement’s interference with checked luggage constitutes a seizure. First, did law enforcement’s detention of the checked luggage delay a passenger’s travel or significantly impact the passenger’s freedom of movement? Second, did law enforcement’s detention of the checked luggage delay its timely delivery? Third, did law enforcement’s detention of the checked luggage deprive the carrier of its custody of the checked luggage? If none of these factors is satisfied, then no [Fourth Amendment](#) seizure has occurred. Conversely, if even a single factor is satisfied, then a [Fourth Amendment](#) seizure has occurred.” [United States v. Va Lerie](#), 424 F.3d 694, 707 (8th Cir. 2005). “We conclude the NSP’s removal of Va Lerie’s checked luggage from the bus to a room inside the terminal to seek consent to search did not constitute a meaningful interference with Va Lerie’s possessory interests in his luggage. Therefore, no [Fourth Amendment](#) seizure occurred.” [Id.](#) at 708.

4. **There are Three Basic Types of Police-Citizen Encounters.**

The Supreme Court has recognized three distinct types of police-citizen encounters. [United States v. Weaver](#), 282 F.3d 302, 309 (4th Cir.), [cert. denied](#), 537 U.S. 847 (2002).

- a. **One Type of Encounter is a Voluntary Contact.** These are brief, voluntary encounters between law enforcement officers and citizens that require neither probable cause nor reasonable suspicion. See [Florida v. Bostick](#), 501 U.S. 429, 434 (1991). A voluntary contact **IS NOT** considered a seizure for purposes of the Fourth Amendment. See, e.g., [United States v. Esparza-Mendoza](#), 386 F.3d 953, 957 (10th

Cir. 2004)(Noting “the Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation”); [United States v. Moore](#), 375 F.3d 580, 584 (7th Cir. 2004)(“[I]t is well settled that a consensual encounter between an individual and a law enforcement official does not trigger Fourth Amendment scrutiny”).

- b. **A Second Type of Encounter is an Investigative Detention.** “Generally, ‘the Fourth Amendment ... prohibits state actors from making searches or seizures in the absence of probable cause.’” [United States v. Heard](#), 367 F.3d 1275, 1278 (11th Cir. 2004)[*citing* [United States v. Dunn](#), 345 F.3d 1285, 1288 (11th Cir. 2003)]. However, the Supreme Court has “announced an exception to the probable cause requirement: minimally intrusive searches and seizures of the person are permissible when a law enforcement officer has an objectively **reasonable suspicion** that ‘criminal activity may be afoot.’” *Id.* at 1289 (emphasis added). Sometimes referred to as “[Terry](#) Stops,” these are brief investigatory stops that must be supported by reasonable, articulable suspicion. [Terry v. Ohio](#), 392 U.S. 1 (1968). An investigative detention is considered a seizure for purposes of the Fourth Amendment, although it does not rise to the level of an arrest. See, e.g., [United States v. Acosta](#), 363 F.3d 1141, 1145-46 (11th Cir. 2004)(“There is a difference between an investigative stop of limited duration for which reasonable suspicion is enough, and a detention that amounts to an arrest for which probable cause is required”); [United States v. Bentley](#), 29 F.3d 1073, 1075 (6th Cir.), *cert. denied*, 513 U.S. 1028 (1994)(Noting that, “where a law enforcement officer lacks probable cause, but possesses a reasonable and articulable suspicion that a person has been involved in criminal activity, he may detain the suspect briefly to investigate the suspicious circumstances”).
- c. **A Third Type of Encounter is an Arrest.** An individual may be arrested upon a law enforcement officer establishing probable cause that a crime has been committed. [Brown v. Illinois](#), 422 U.S. 590 (1975). An arrest is considered a seizure for purposes of the Fourth Amendment.

See also [United States v. Johnson](#), 384 F.3d 1185, 1188 (10th Cir. 2004)(Noting that “police-citizen encounters come in three varieties. The first involves the voluntary cooperation of a citizen in response to non-coercive questioning. The second is a [Terry v. Ohio](#) stop, involving only a brief, non-intrusive detention and frisk for weapons when officers have a reasonable suspicion that the defendant has committed a crime or is about to do so. The third encounter is the arrest of the defendant”)(citation omitted).

5. **Seizures That Begin Lawfully May Turn Unlawful.** “[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” [Caballes](#), 125 S. Ct. at 837. So, for example, a “seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” [Id.](#)
6. **Voluntary Contacts.** In [Florida v. Royer](#), 460 U.S. 491, 497 (1983)(plurality opinion), the Supreme Court noted, “law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.” These types of encounters are typically referred to as “voluntary contacts” or “consensual encounters.” See, e.g., [Esparza-Mendoza](#), 386 F.3d at 957 (“An encounter is consensual if the defendant is free to leave at any time during the encounter”); [United States v. Manjarrez](#), 348 F.3d 881, 885-86 (10th Cir. 2003)(“An encounter is consensual when a reasonable person would believe he was free to leave or disregard the officer’s request for information. ... A consensual encounter is a voluntary exchange between the officer and the citizen in which the officer may ask non-coercive questions”)[citing [United States v. West](#), 219 F.3d 1171, 1176 (10th Cir. 2000)].
 - a. **No Suspicion is Required for a Voluntary Contact.** As noted above, voluntary contacts require neither probable cause nor reasonable suspicion.
 - b. **Permissible Actions During a Voluntary Contact.** When conducting a voluntary contact, a law enforcement officer may take the following actions without turning the contact into a “seizure” implicating the Fourth Amendment:
 - 1) **Questioning.** A law enforcement officer may

approach an individual and ask him or her questions, even incriminating questions, without turning the contact into a seizure. See [Texas v. Cobb](#), 532 U.S. 162, 171-72 (2001)(Noting “it is critical to recognize that the Constitution does not negate society’s interest in the ability of police to talk to witnesses and suspects”); [Florida v. Rodriguez](#), 469 U.S. 1, 5-6 (1984); [INS v. Delgado](#), 466 U.S. 210, 216 (1984).

- 2) **Identification.** A law enforcement officer may request, but not demand, to see an individual’s identification without turning the contact into a seizure. See [Delgado](#), *supra*; [Royer](#), *supra*; [United States v. Campbell](#), 486 F.3d 949 (6th Cir. 2007) (reaffirming that interrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure); [United States v. Mendenhall](#), 446 U.S. 544, 557-558 (1980); [United States v. Wade](#), 400 F.3d 1019, 1022 (7th Cir. 2005) (noting that “requests for identification do not imply a detention”).
- 3) **Display of Authority.** A law enforcement officer may identify himself and display his credentials during a voluntary contact. See [United States v. Polk](#), 97 F.3d 1096, 1098 (8th Cir. 1996); [United States v. Moreno](#), 897 F.2d 26, 30-31 (2d Cir.), *cert. denied*, 497 U.S. 1009 (1990).
- 4) **Request for Consent to Search.** A law enforcement officer may seek consent for a search without turning the contact into a seizure. See [Royer](#), *supra*; [Bostick](#), *supra*; [United States v. Glass](#), 128 F.3d 1398, 1407 (10th Cir. 1997); [United States v. Peterson](#), 100 F.3d 7, 11 (2d Cir. 1996).

NOTE: Occasionally, students will suggest that any time an officer asks a person for consent to search, the person may feel intimidated to the extent that he does not feel “free to leave.” One court that addressed that contention did so as follows: “Even though consensual searches, and stops that fall short of seizures, do not implicate the Fourth Amendment, we recognize that there is a bit of intimidation involved anytime a police officer stops a person and asks for permission to conduct a search. The person to whom the request is directed might consider several possibilities. If he refuses, he may think the

police will assume he's got something to hide and not allow him to leave. Although the former is probably true, he should know, assuming he didn't sleep through high school civics classes, that the latter proposition is not true. If he consents to the search, it might be because he has nothing to hide, or because he thinks a search will not find what he is concealing. Regardless of the thought processes someone who is asked to consent to a search might go through, we look to objective factors - whether a reasonable person would feel free to terminate the encounter." [Wade](#), 400 F.3d at 1021-22 (internal citation omitted).

For more discussions of permissible actions during a voluntary encounter, see generally [United States v. Bryson](#), 110 F.3d 575, 579-80 (8th Cir. 1997); [United States v. Odum](#), 72 F.3d 1279, 1283 (7th Cir. 1995); [United States v. Travis](#), 62 F.3d 170, 173 (6th Cir. 1995), cert. denied, 516 U.S. 1060 (1996).

c. **When Voluntary Contacts Become Investigative Stops.**

While voluntary contacts may be made without any basis for suspecting an individual of wrongdoing, it should be remembered that "some contacts that start out as constitutional may ... at some unspecified point, cross the line and become an unconstitutional seizure." [Weaver](#), 282 F.3d at 309. See also [United States v. Foster](#), 376 F.3d 577, 584 (6th Cir. 2004) ("A consensual encounter can ripen into a seizure if in light of all of the circumstances, a reasonable person would have believed that he or she was not free to walk away") (citation and internal quotation marks and brackets omitted). For this reason, a law enforcement officer's actions during a voluntary contact may be scrutinized to determine whether the encounter "somehow crossed the not-so-bright line and blossomed into an unconstitutional seizure." [Id.](#) "No single factor will be dispositive in every case." [Esparza-Mendoza](#), 386 F.3d at 959 (citation omitted). Among the factors courts will examine to determine whether a seizure has occurred are the following:

- 1) **Time, Place, and Purpose of the Encounter;** [United States v. Washington](#), 387 F.3d 1060, 1068 (9th Cir. 2004) (Factors to consider included "whether the encounter occurred in a public or non-public

setting”); [United States v. Abdenbi](#), 361 F.3d 1281, 1291 (10th Cir. 2004)(Noting relevant factors to consider in whether consensual encounter became seizure include whether the “interaction” occurred “in a nonpublic or a small, enclosed space” in the “absence of other members of the public”)[*citing* [United States v. Sanchez](#), 89 F.3d 715, 718 (10th Cir. 1996)]; [United States v. Williams](#), 356 F.3d 1268, 1274 (10th Cir. 2004)(No seizure where “the encounter occurred in a relatively open space” and the defendant’s “path of egress ... was at no time impeded”); [United States v. Jefferson](#), 906 F.2d 346, 349 (8th Cir. 1990)(Noting that “courts have considered the time and setting of the encounter to be important factors in determining whether a seizure has occurred”); [United States v. Battista](#), 876 F.2d 201, 204 (D.C. Cir. 1989)(Among facts considered in deciding that seizure occurred were that defendant was “roused ... from his bed at 6:30 a.m. ... in some partial state of undress”).

- 2) **Words Used By the Officer**, [Williams](#), 356 F.3d at 1274 (Noting “a consensual encounter between a citizen and police can be transformed into a seizure through persistent and accusatory questioning by police”); [United States v. Richardson](#), 385 F.3d 625, 629 (6th Cir. 2004)(“In determining whether a particular encounter between an officer and a citizen constitutes a seizure, we recognize that words alone may be enough to make a reasonable person feel that he would not be free to leave”).
- 3) **The Use of Language or Tone of Voice Indicating That Compliance With the Officer’s Request Might Be Compelled**, [United States v. Drayton](#), 536 U.S. 194, 204 (2002)(Where officer spoke to bus passengers “one by one and in a polite, quiet voice,” without any commands or threats, no seizure occurred because nothing the officer said “would suggest to a reasonable person that he or she was barred from leaving the bus or otherwise terminating the encounter”); [Washington](#), 387 F.3d at 1068 (Factors to consider included “whether the officer’s officious or authoritative manner would imply that compliance would be compelled”); [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included the “use of aggressive language or tone of voice indicating that compliance with an officer’s

request is compulsory”) (citation omitted); [United States v. Santos-Garcia](#), 313 F.3d 1073, 1078 (8th Cir. 2002)(No seizure occurred where, *inter alia*, “the tone of the entire exchange was cooperative”); [United States v. Guerrero](#), 472 F.3d 784, 789 (10th Cir. 2007) (listing a “commanding tone of voice indicating that compliance might be compelled” as evidence of a coercive show of authority);.

- 4) **Threatening Presence of Several Officers**, [Drayton](#), 536 U.S. at 204 (Where there was “no overwhelming show of force,” no seizure occurred); [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included “the threatening presence of several officers”)(citation omitted); [Washington](#), 387 F.3d at 1068 (Factors to consider included “the number of officers” present); [Guerrero](#), 472 F.3d at 789 (same).
- 5) **Display of Weapons**, [Drayton](#), 536 U.S. at 204 (No seizure occurred where, *inter alia*, there was “no brandishing of weapons” by the officers); [Washington](#), 387 F.3d at 1068 (Factors in determining whether seizure occurred included whether weapons were displayed); [Williams](#), 356 F.3d at 1274 (No seizure where “[n]one of the officers were uniformed, nor did they at any time display a weapon”); [Santos-Garcia](#), 313 F.3d at 1078 (No seizure occurred where, *inter alia*, the officer “did not display a weapon”).
- 6) **Physical Touching of the Citizen**, [Drayton](#), 536 U.S. at 204 (No seizure occurred where, *inter alia*, “[t]here was no application of force”); [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included “some physical touching by an officer”) (citation omitted); [Guerrero](#), 472 F.3d at 789 (same).
- 7) **Retention of a Citizen’s Identification or Other Personal Property**, [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included the “prolonged retention of a person’s personal effects”) (citation omitted); [Weaver](#), 282 F.3d at 310 (“Most important, for our present purposes, numerous courts have noted that the retention of a citizen’s identification or other personal property or effects is highly material under the totality of the circumstances analysis”); [Santos-Garcia](#), 313 F.3d at 1078 (Noting defendant was “no longer seized within the meaning of the Fourth Amendment after [the officer] returned

[his] identification and issued a warning ticket").

- 8) **Requests to Accompany the Officer to the Police Station**, [Abdenbi](#), 361 F.3d at 1291. (Relevant factors in determining seizure included "a request to accompany the officer to the station")(citation omitted).
- 9) **Whether the Individual Was Advised He Was Not Required to Cooperate**, [Washington](#), 387 F.3d at 1068 (Factors to consider included "whether the officers advised the detainee of his right to terminate the encounter"); [United States v. Little](#), 18 F.3d 1499, 1505 (10th Cir. 1994)(en banc).

See also [Mendenhall](#), 446 U.S. at 554; [Bostick](#), 501 U.S. at 437; [Chesternut](#), 486 U.S. at 571-76; [Kaupp v. Texas](#), 538 U.S. 626 (2003); [Wade](#), 400 F.3d at 1021-1023; [Spence](#), 397 F.3d at 1283.

NOTE: Within the context of a traffic stop, many circuits have established a "bright-line" rule regarding seizures and the detention of a person's driver's license. More specifically, "[i]n the context of a traffic stop, if an officer retains one's driver's license, the citizen would have to choose between the Scylla of consent to the encounter or the Charybdis of driving away and risk being cited for driving without a license." [Weaver](#), 282 F.3d at 311. See, e.g., [United States v. Mendez](#), 118 F.3d 1426, 1430 (10th Cir. 1997)(Noting that the Tenth Circuit Court of Appeals "has consistently applied at least one bright-line rule: an officer must return a driver's documentation before the detention can end"); [United States v. Chan-Jimenez](#), 125 F.3d 1324, 1326 (9th Cir. 1997)("When a law enforcement official retains control of a person's identification papers, such as vehicle registration documents or a driver's license, longer than necessary to ascertain that everything is in order, and initiates further inquiry while holding on to the needed papers, a reasonable person would not feel free to depart"); [United States v. Winfrey](#), 915 F.2d 212, 216 (6th Cir. 1990), cert. denied, 498 U.S. 1039 (1991)("We find that a reasonable person would conclude that Winfrey was seized for purposes of the fourth amendment when his driver's license, automobile registration, and keys were retained by the officers and he was ordered to remain there until the DEA agents arrived.").

7. **Investigative Detentions.** Prior to 1968, encounters between law enforcement officers and citizens were categorized either as voluntary contacts (with no suspicion necessary) or arrests (which required probable cause). In [Terry v. Ohio](#), 392 U.S. 1 (1968), the Supreme Court established the requisite standard for a third type of police-citizen encounter, known as an investigative detention ("[Terry](#) Stop").

a. **Investigative Detentions Defined.** An "investigative detention" is a "brief, investigatory stop when a law enforcement officer has a reasonable, articulable suspicion that criminal activity is afoot." [Terry](#), 392 U.S. at 30; [Illinois v. Wardlow](#), 528 U.S. 119, 123 (2000).

b. **Requirements for an Investigative Detention of a Person.** To conduct an investigative detention of a person, a law enforcement officer must meet two (2) requirements.

1) **Reasonable Suspicion is Required for an Investigative Stop.** First, a law enforcement officer must have "reasonable suspicion" to conduct an investigative detention. An officer need not know with absolute certainty that a crime is in progress or being considered. See [Wardlow](#), 528 U.S. at 126 ("In allowing [investigatory] detentions, [Terry](#) accepts the risk that officers may stop innocent people").

a) **"Reasonable Suspicion" is a Lesser Standard Than "Probable Cause".** This standard is "considerably less than proof of wrongdoing by a preponderance of the evidence," [United States v. Sokolow](#), 490 U.S. 1, 7 (1989), and "is obviously less demanding than that for probable cause." [United States v. Montoya de Hernandez](#), 473 U.S. 531, 541, 544 (1985). Nevertheless, the Fourth Amendment requires "some minimal level of objective justification." [Sokolow](#), 490 U.S. at 7. Thus, a law enforcement officer "must be able to articulate something more than an inchoate and unparticularized suspicion or 'hunch.'" [Terry](#), 392 U.S. at 27. Stated differently, "[w]hat [Terry](#) requires to satisfy the Fourth Amendment's reasonable seizure standard is ... a rational reason (as opposed to a hunch) to suspect criminal activity." [Bolton v. Taylor](#), 367 F.3d 5, 7 (1st Cir. 2004). Of course, "reasonable suspicion is not a 'finely-tuned' or

bright-line standard; each case involving a determination of reasonable suspicion must be decided on its own facts.” [Ornelas v. United States](#), 517 U.S. 690, 696 (1996).

- b) **Courts Look at the “Totality of the Circumstances” to Determine if Reasonable Suspicion Exists.** “A court inquiring into the validity of a [Terry](#) stop must use a wide lens and survey the totality of the circumstances.” [United States v. Romain](#), 393 F.3d 63, 71 (1st Cir. 2004). That’s because, typically, “[a] determination of reasonable suspicion ... does not depend on any single factor” [United States v. Singh](#), 363 F.3d 347, 354 (4th Cir. 2004). Instead, to determine whether reasonable suspicion exists, courts “must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” [United States v. Arvizu](#), 534 U.S. 266, 273 (2002)(citation omitted). See also [Sokolow](#), 490 U.S. at 8; [United States v. Knox](#), 839 F.2d 283, 290 (6th Cir. 1988), cert. denied, 490 U.S. 1019 (1989) (Noting that, in order to conduct an investigation detention, “a pattern of suspicious behavior need only be recognizable by one ‘versed in the field of law enforcement’”).

NOTE: By utilizing a “totality of the circumstances” standard, law enforcement officers are allowed to “draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” [Arvizu](#), 534 U.S. at 273. See also [Bolton](#), 367 F.3d at 9 (Noting that “the law imputes to a trained policeman a measure of expertise, and an explainable suspicion can be based on an assemblage of clues viewed through the lens of the policeman’s training and experience”)(internal citation omitted); [United States v. Perkins](#), 363 F.3d 317, 321 (4th Cir. 2004)(Noting a “determination of reasonable suspicion must give due weight to common sense

judgments reached by officers in light of their experience and training”). Of course, the Fourth Amendment still “requires police ‘to explain *why* the officer’s knowledge of particular criminal practices gives special significance to the apparently innocent facts observed.” [United States v. Logan](#), 362 F.3d 530, 533 (8th Cir. 2004)(emphasis in original)[*citing* [United States v. Johnson](#), 171 F.3d 601, 604 (8th Cir. 1999)].

c) **Reasonable Suspicion Can Be Based Upon Completely Innocent Behavior.** “A reasonable suspicion of criminal activity may be formed by observing exclusively legal activity.” [United States v. Gordon](#), 231 F.3d 750, 754 (11th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). *See also* [Wardlow](#), 528 U.S. at 125; [Terry](#), 392 U.S. at 22-23. “[T]he relevant inquiry is not whether particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of noncriminal acts.” [Sokolow](#), 490 U.S. at 10. Nevertheless, “conduct typical of a broad category of innocent people provides a weak basis for suspicion.” [United States v. Weaver](#), 966 F.2d 391, 394 (8th Cir.), *cert. denied*, 506 U.S. 1040 (1992).

2) **Generally, Criminal Activity Must Be Afoot to Justify an Investigative Detention.** Second, a law enforcement officer must reasonably suspect that “criminal activity is afoot.” In its most basic sense, this means that the officer must reasonably suspect that (1) a crime is about to be committed, [Terry](#), *supra*; (2) a crime is being committed, [Adams v. Williams](#), 407 U.S. 143 (1972); or (3) a crime has been committed, [United States v. Hensley](#), 469 U.S. 221 (1985). It should be remembered, however, that “[o]fficers are not required under [Terry](#) to have reasonable suspicion of ongoing illegal activity in order to make investigative stops. Indeed, the very point of [Terry](#) was to permit officers to take preventive action and conduct investigative stops before crimes are committed, based on what they view as suspicious - albeit even legal - activity.” [Perkins](#), 363

NOTE: The Sixth Circuit categorically prohibits Terry stops based upon completed misdemeanors. Gaddis v. Redford Twp., 364 F.3d 763, 771, n.6 (6th Cir. 2004) (“Police may . . . make a stop when they have reasonable suspicion of a completed felony, though not of a mere completed misdemeanor.”). The Eighth, Ninth, and Tenth Circuits, which are the only other circuits to have ruled on the issue, hold that the reasonableness of a Terry stop for a completed misdemeanor depends upon the nature of the misdemeanor offense, with particular attention to the potentiation for ongoing or repeated danger (e.g., drunken and/or reckless driving), and any risk of escalation (e.g., disorderly conduct, assault, domestic violence). A Terry stop based on a completed misdemeanor is unreasonable when, within the totality of the circumstances, there is no public safety risk, and when alternative means to identify the suspect or achieve the investigative purpose of the stop are possible. United States v. Grigg, 498 F.3d 1070, 1081-82 (9th Cir. 2007); United States v. Hughes, 2008 U.S. App. LEXIS 4011 (8th Cir. 2008); United States v. Moran, 503 F.3d 1135 (10th Cir. 2007).

- c. **When Investigation Detentions Become Arrests.** While an investigative detention requires reasonable suspicion that criminal activity is afoot, an arrest requires probable cause that a crime is being, or has been, committed. The requirements for a valid arrest will be discussed more fully in other EPOs. However, it should be remembered that “an encounter that began as a permissible [Terry](#) stop may . . . ripen[] into an arrest, which must be supported by probable cause. . . .” [United States v. Perea](#), 986 F.2d 633, 644 (2d Cir. 1993). “No mechanical checklist has been assembled to facilitate distinguishing between such investigative stops, on the one hand, and those detentions, on the other, which though not technical, formal arrests are the ‘equivalent of an arrest’ and therefore require probable cause.” [United States v. Quinn](#), 815 F.2d 153, 156 (1st Cir. 1987). See also [United States v. Sharpe](#), 470 U.S. 675, 685 (1985) (Noting the difficulties in “distinguishing an investigative stop from a *de*

facto arrest”)(emphasis in original); [United States v. Acosta-Colon](#), 157 F.3d 9, 14 (1st Cir. 1998)(“There is no ‘litmus-paper test,’ ... to determine whether any particular mode of detention amounted to a *de facto* arrest”); [Washington v. Lambert](#), 98 F.3d 1181, 1185 (9th Cir. 1996)(“There is no bright-line rule to determine when an investigatory stop becomes an arrest”). However, where “the totality of circumstances indicates that an encounter has become too intrusive to be classified as an investigative detention, the encounter is a full-scale arrest, and the government must establish that the arrest is supported by probable cause.” [United States v. Hastamorir](#), 881 F.2d 1551, 1556 (11th Cir. 1989). In determining whether a *de facto* arrest occurred, courts will consider the following factors:

- 1) **The Purposes Behind the Stop/Nature of the Crime**, [United States v. Seelye](#), 815 F.2d 48, 50 (8th Cir. 1987); [United States v. McCarthy](#), 77 F.3d 522, 530 (1st Cir.), cert. denied, 519 U.S. 991 (1996) (citation omitted); [United States v. Virden](#), 488 F.3d 1317, 1321 (11th Cir. 2007);
- 2) **Whether the Police Diligently Sought to Carry Out the Purpose of the Stop**, [Sharpe](#), 470 U.S. at 686; [McCarthy](#), 77 F.3d at 530 (citation omitted); [United States v. Carter](#), 139 F.3d 424, 433 (4th Cir. 1998); [Virden](#), 488 at 1321;
- 3) **The Amount of Force Used By the Police**, [Perea](#), 986 F.2d at 645; [McCarthy](#), 77 F.3d at 530;
- 4) **The Need for Such Force**, [Perea](#), 986 F.2d at 645;
- 5) **Information Conveyed to the Detainee Concerning the Reasons For the Stop**, [McCarthy](#), 77 F.3d at 530; [Carter](#), 139 F.3d at 433 (Factors to consider included “whether the authorities made it absolutely clear that they planned to reunite the suspect and his possessions at some future time, and how they planned to do it”);
- 6) **The Extent to Which an Individual’s Freedom of Movement was Restrained**, [Perea](#), 986 F.2d at 645; [Quinn](#), 815 F.2d at 157 n.2 (Noting that, “[w]hile restrictions on the freedom of movement is a factor to be taken into account in determining whether a person is under arrest, it alone is not sufficient to transform a *Terry* stop into a *de facto* arrest”)(emphasis in original); [McCarthy](#), 77 F.3d at 530 (Factors to consider in determining whether *de facto*

arrest made include “the restrictions placed on his or her personal movement”);

- 7) **The Number of Agents/Officers and Police Cars Involved**, [Perea](#), 986 F.2d at 645; [Seelye](#), 815 F.2d at 50;
 - 8) **Whether the Target of the Stop Was Suspected of Being Armed**, [Perea](#), 986 F.2d at 645; [Seelye](#), 815 F.2d at 50;
 - 9) **The Duration and Intensity of the Stop**, [Perea](#), 986 F.2d at 645; [Carter](#), 139 F.3d at 433; [Virden](#), 488 at 1321;
 - 10) **Whether the Stop Was Unnecessarily Prolonged**, [Carter](#), 139 F.3d at 433;
 - 11) **The Physical Treatment of the Suspect, Including Whether or Not Handcuffs Were Used**, [Perea](#), 986 F.2d at 645;
 - 12) **Any Alternative Means By Which the Police Could Have Served the Purpose of the Stop**, [Seelye](#), 815 F.2d at 50 (Noting one factor to consider in whether stop rose to an arrest was “whether there was an opportunity for the officer to have made the stop in less threatening circumstances”);
 - 13) **The Time and Location of the Stop**, [United States v. Jones](#), 759 F.2d 633, 640 (8th Cir.), cert. denied, 474 U.S. 837 (1985);
 - 14) **The Strength of the Officer's Articulable, Objective Suspicions**, [Seelye](#), 815 F.2d at 50;
 - 15) **The Need for Immediate Action By the Officer**, [Seelye](#), 815 F.2d at 50;
 - 16) **The Presence or Lack of Suspicious Behavior or Movement By the Person Under Observation**, [Seelye](#), 815 F.2d at 50;
 - 17) **The Importance of the Governmental Interest Alleged to Justify the Intrusion**, [Carter](#), 139 F.3d at 433.
- d. **Personal Property May Be Detained on Reasonable Suspicion.** Where a law enforcement officer has reasonable suspicion that a piece of personal property, such as luggage, contains contraband or evidence of a crime, the property may be detained. See [United States v. Place](#), 462 U.S. 696, 706 (1983)(“We conclude that when an officer's

observations lead him reasonably to believe that a traveler is carrying luggage that contains narcotics, the principles of [Terry](#) and its progeny would permit the officer to detain the luggage briefly to investigate the circumstances that aroused his suspicion, provided that the investigative detention is properly limited in scope"); [United States v. Frost](#), 999 F.2d 737, 741 n.1 (3d Cir), cert. denied, 510 U.S. 1001 (1993) (Same); [United States v. McFarley](#), 991 F.2d 1188, 1192 (4th Cir), cert. denied, 510 U.S. 949 (1993)(Same).

e. **Reasonable Suspicion May Be Established in a Variety of Ways.**

"An officer who performs an investigatory stop 'must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion.'" [United States v. Baskin](#), 410 F.3d 788, 792 (7th Cir. 2005) (*citing Terry*, 392 U.S. at 21). Reasonable suspicion may be established in a variety of ways, including:

- 1) **An Officer's Personal Observations Can Establish Reasonable Suspicion.** A law enforcement officer's personal observations may form the basis for reasonable suspicion to conduct an investigatory detention. [Terry](#), *supra*. A great deal of deference is given to the personal observations of a law enforcement officer. See, e.g., [United States v. Cortez](#), 449 U.S. 411, 418 (1981)("A trained officer draws inferences and makes deductions - inferences and deductions that might well elude an untrained person"); [United States v. Jacob](#), 377 F.3d 573, 578 (6th Cir. 2004)(Reasonable suspicion established, in part, because officers observed defendant engage in countersurveillance); [United States v. Hurt](#), 376 F.3d 789, 792-93 (8th Cir. 2004)(Reasonable suspicion established by officer's "experience and training"); [United States v. Cervine](#), 347 F.3d 865, 867-68 (10th Cir. 2003)(Evidence of counter-surveillance supported reasonable suspicion).
- 2) **Reasonable Suspicion May Be Established Using Information Provided From Other Officers.** "Police officers are not limited to personal observations in conducting investigatory activities, and reasonable suspicion for a [Terry](#) stop may be based on information furnished by others." [Romain](#), 393 F.3d at 71. This concept is sometimes referred to as "collective knowledge." The collective knowledge doctrine applies when "an officer (or team of officers),

with direct personal knowledge of *all* the facts necessary to give rise to reasonable suspicion or probable cause, directs or requests that another officer, not previously involved in the investigation, conduct a stop, search, or arrest.” United States v. Ramirez, 473 F.3d 1026, 1033 (9th Cir. 2007). *See, e.g., United States v. Barnes*, 506 F.3d 58, 63 (1st Cir. 2007) (“reasonable suspicion can be imputed to the officer conducting a search if he acts in accordance with the direction of another officer who has reasonable suspicion”); United States v. Hensley, 469 U.S. 221, 232 (1985) (Information justifying stop came from flyer issued by another jurisdiction); United States v. Longmire, 761 F.2d 411, 419 (7th Cir. 1985) (Information came from a four-hour old radio bulletin); United States v. Hinojos, 107 F.3d 765, 768 (10th Cir. 1997) (“Under the ‘fellow officer’ rule ... law enforcement officers may pool their information and ... reasonable suspicion is to be determined on the basis of the collective knowledge of all the officers involved”); and United States v. Erwin, 155 F.3d 818, 822 (6th Cir. 1998), *cert. denied*, 525 U.S. 1123 (1999) (“A law enforcement officer is generally justified in stopping an individual and asking for identification when relying on information transmitted by a valid police bulletin”).

- 3) **Reasonable Suspicion May Be Established Using Information Provided By a Third Party.** Information from a third party, such as a victim or witness, can provide the facts necessary to justify reasonable suspicion in the same way victim or witness information can be used to establish probable cause.

NOTE: When a police response is based upon information provided through a 911 emergency call, the degree of reliability of the caller who provided the information may be less than that typically required. “Not surprisingly, 911 calls are the predominant means of communicating emergency situations.” United States v. Holloway, 290 F.3d. 1331, 1339 (11th Cir. 2002), *cert. denied*, 537 U.S. 1161 (2003). *See also United States v. Richardson*, 208 F.3d 626, 630 (7th Cir.), *cert. denied*, 531 U.S. 910 (2000) (“A 911 call is one of the most common - and universally recognized - means through which police and other emergency personnel learn that there is

someone in a dangerous situation who urgently needs help”). And, because “it is reasonable to accommodate the public’s need for a prompt police response” to a 911 call, “an emergency 911 call is entitled to greater reliability than an anonymous tip concerning general criminality.” [Terry-Crespo](#), 356 F.3d 1170, 1176 (9th Cir. 2004). The Supreme Court recognized such a distinction between 911 calls that relate to “general” criminal activity and those made in response to emergencies in [Florida v. J.L.](#), 529 U.S. 266 (2000): “The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.” *Id.* at 273-74. “Thus, when an *emergency* is reported by an anonymous caller, the need for immediate action may outweigh the need to verify the reliability of the caller.” [Holloway](#), 290 F.3d at 1339 (emphasis in original). Similarly, “it is appropriate for police to conduct an investigative stop ‘when the victim of a street crime seeks immediate police aid and gives a description of the assailant.’” [United States v. Fisher](#), 364 F.3d 970, 973 (8th Cir. 2004)[*citing Adams v. Williams*, 407 U.S. 143, 147 (1972)]. Finally, it should be noted that two circuit courts of appeal “have even held that a 911 call reporting a domestic emergency, without more, may be enough to support a warrantless search of a home.” [United States v. Brooks](#), 367 F.3d 1123, 1136 (9th Cir. 2004)[*citing Richardson*, 208 F.3d at 630 (Determining that a 911 call where the caller identified himself and stated that the body of a woman who had been raped and murdered could be found in the basement of a particular address was enough to support a warrantless search under the exigent circumstances exception); [United States v. Cunningham](#), 133 F.3d 1070, 1072-73 (8th Cir.), *cert. denied*, 523 U.S. 1131 (1998)(Holding that a 911 call from a

woman who identified herself and claimed that she was being held against her will justified a protective sweep of the dwelling).

- 4) **Reasonable Suspicion May Be Established Using Information Provided By An Informant or Anonymous Source.** It is not uncommon for an informant or anonymous source to provide the information necessary to establish reasonable suspicion. While this is permissible, additional corroboration will generally be required in these instances before reasonable suspicion can be established.
- a) **Reliability Depends on Quantity and Quality of Information.** The reliability of a tip provided by an informant depends on both the “quantity and quality” of the information provided by the source. [Alabama v. White](#), 496 U.S. 325, 330 (1990). Of course, it should be remembered that “[r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.” [Id.](#) at 330.
- b) **Tips From Known Informants or Sources.** Tips from known informants or sources can be used to justify reasonable suspicion.
- (1) **Known Informants.** A tip from a confidential informant with an established track record may contain sufficient indicia of reliability that it establishes reasonable suspicion under the totality of the circumstances with little or no corroboration. See, e.g., [White](#), 496 U.S. at 330 (Court noted that in [Adams v. Williams](#), 407 U.S. 143 (1972), they “assumed that the unverified tip from the known informant might not have been reliable enough to establish probable cause, but

nevertheless found it sufficiently reliable to justify a [Terry](#) stop"); [United States v. Woosley](#), 361 F.3d 924, 927 (6th Cir. 2004)("[A]n affidavit including a tip from an informant that has been proven to be reliable may support a finding of probable cause [and reasonable suspicion] in the absence of any corroboration")(citation omitted).

(2) **Quasi-Anonymous Sources.** "While 'a tip might be anonymous might be anonymous in some sense,' it may have 'certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action.'" [Terry-Crespo](#), 356 F.3d at 1174 (citation omitted).

c) **Tips From Anonymous Informants.** "Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated ... 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity.'" [Florida v. J.L.](#), 529 U.S. 266, 270 (2000)(internal citations omitted)... "A tipster who refuses to identify himself may simply be making up the story, perhaps trying to use the police to harass another citizen." [United States v. Johnson](#), 364 F.3d 1185, 1190 (10th Cir. 2004)... Accordingly, a tip from an anonymous source may be sufficient to establish reasonable suspicion, but must have some degree of reliability associated with its "assertion of illegality." [J.L.](#), 529 U.S. at 272. *See also* [Romain](#), 393 F.3d at 71 ("An officer may rely upon an informant's tip to establish reasonable suspicion only if the information carries 'sufficient 'indicia of reliability'" to warrant acting upon it. That determination entails an examination of all the circumstances bearing upon the tip itself and the tipster's veracity, reliability, and basis of knowledge"). "If a tip has a relatively low degree of reliability, more information will be required to establish the

requisite quantum of suspicion than would be required if the tip were more reliable.” [White](#), 496 U.S. at 330. In determining whether an anonymous tip contains enough verifiable information to establish reasonable suspicion, courts rely upon the following types of factors:

- (1) **The Amount of Detail Provided By the Source.** See, e.g., [United States v. Nelson](#), 284 F.3d 472, 480 (3rd Cir. 2002) (citation omitted)(Noting that “even though [a] tip [is] wholly anonymous, the details provided in the tip [may be] sufficiently particularized and accurate to reflect a ‘special familiarity’ with the subject of the information”); [Ganser](#), 315 F.3d at 843 (“In determining whether a tip has furnished ‘enough verifiable information to provide reasonable suspicion, courts examine [*inter alia*] the amount of information given”); [United States v. Gonzalez](#), 190 F.3d 668, 672 (5th Cir. 1999)(Among factors to be considered in determining whether tip establishes reasonable suspicion is “the specificity of the information contained in the tip or report”); [United States v. Wheat](#), 278 F.3d 722, 731 (8th Cir. 2001), cert. denied, 537 U.S. 850 (2002)(Discussing tip in context of a traffic stop, court noted “the anonymous tipster must provide a sufficient quantity of information”).
- (2) **Whether the Source Predicts Future Behavior.** See, e.g., [White](#), 496 U.S. at 332 (Noting importance of source’s “ability to predict respondent’s future behavior, because it demonstrated inside information”); [Ganser](#), 315 F.3d at 843 (Where the anonymous source “accurately predicted future behavior,” this “demonstrate[ed] inside information and a special familiarity” with the suspect’s criminal activity); [United States v. Patterson](#), 340 F.3d 368, 371 (6th Cir. 2003) (Holding [Terry](#) stop

impermissible in that “anonymous tip ... offered no reliable or meaningful information in support of reasonable suspicion because it was not specific enough as to a prediction of future unlawful activities”).

NOTE: As in many areas of Fourth Amendment jurisprudence, the Ninth Circuit Court of Appeals has crafted rules regarding a particular legal issue that are squarely in conflict with all other Federal courts. This continues to be true on the issue of establishing the reliability of anonymous tipsters, like those discussed in [White](#) and [J.L.](#) In [United States v. Morales](#), 252 F.3d 1070 (9th Cir. 2001), the Ninth Circuit held that three (3) requirements must be met “in order for an anonymous tip to serve as the basis for reasonable suspicion.” [Id.](#) at 1076. First, “the tip must include a ‘range of details’; second, the tip cannot simply describe easily observed facts and conditions, but must predict the suspect’s future movements; and third, the future movements must be corroborated by independent police observation.” [Id.](#) Thus, the Ninth Circuit *mandates* that an anonymous tip include predictive information before it can be used to establish reasonable suspicion. This is in conflict with the majority of circuit courts to have discussed the issue. Under the majority view, “[a] rigid rule demanding the presence of predictive information is ... unjustified,” and “would be wholly inconsistent with the flexible nature of reasonable suspicion analysis.” [Perkins](#), 363 F.3d at 325. *Accord Nelson*, 284 F.3d at 483-84 (Noting that while “predictive information

can demonstrate particularized knowledge [as required in [White](#) and [J.L.](#)], other aspects of the tip can reflect particularized knowledge as well"); [Wheat](#), 278 F.3d at 734 (Noting that "[White](#) did not create a rule *requiring* that a tip predict future action, and neither did [J.L.](#)") (emphasis in original)(internal citation omitted); [United States v. Tucker](#), 305 F.3d 1193, 1201 (10th Cir. 2002), cert. denied, 537 U.S. 1223 (2003)(Noting that "while the police did not corroborate predictive details in the tip," this "lack of corroboration is not fatal").

- (3) **Whether and to What Extent the Police Corroborate the Source's Information.** See, e.g., [White](#), 496 U.S. at 331 (Court noted that, where "an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity"); [Perkins](#), 363 F.3d at 322 ("Before deciding to make an investigative stop, Officer Burdette confirmed important aspects of the tip. The fact that he found the two white males in a red car with a silver or white stripe at the precise duplex reported, just as the caller had corroborated, offers important corroboration of the tip"); [Ganser](#), 315 F.3d at 843 ("In determining whether a tip has furnished 'enough verifiable information to provide reasonable suspicion, courts examine [*inter alia*] ... the amount of police corroboration") (citation omitted) [Gonzalez](#), 190 F.3d at 672 (Among factors to be considered in determining whether tip establishes reasonable suspicion is "the extent to which the information in the tip or report can be verified by officers in the field").

(4) **Whether the Information is Based Upon the Tipster's First-Hand Observations.** Where the information provided by the tipster is based upon his or her own first-hand observations, the tip is entitled to greater weight than might otherwise be the case. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 234 (1983)(Noting that informant's "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case"); *Perkins*, 363 F.3d at 322 (Where the "tip itself made clear both that the caller was in close proximity to the duplex and that the caller had personally observed the men," the tipster's "contemporaneous viewing of the suspicious activity" served to "enhance the tip's reliability"); *United States v. Holmes*, 360 F.3d 1339, 1343 (D.C. Cir. 2004)(Where informant "supplied the police with an eye-witness account of criminal activity" that was "based upon firsthand observation," tip was entitled to greater weight).

(5) **Whether the Information Places the Anonymity of the Source in Jeopardy.** "If an informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip." *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring). *See also Heard*, 367 F.3d at 1279 ("The reliability of a tip is considered in light of all relevant circumstances, which include ... a consideration of whether the officer can track down the tipster again"); *Holmes*, 360 F.3d at 1344 (Informant's tip entitled to greater weight because informant "placed his anonymity at risk" by "subjecting himself to ready identification by the police"); *Terry-Crespo*, 356 F.3d at 1176 (Reliability of

an informant's tip supported by fact that source "jeopardized any anonymity he might have had by calling 911 and providing his name to an operator during a recorded call").

- (6) **Whether the Information Was Provided in a Face-to-Face Encounter.** Where a tip is provided to the police in a face-to-face encounter, courts typically consider the "report inherently more trustworthy." [United States v. Thompson](#), 234 F.3d 725, 729 (D.C. Cir. 2000), cert. denied, 532 U.S. 1000 (2001). See also [Romain](#), 393 F.3d at 73 ("Unlike a faceless telephone communication from out of the blue, a face-to-face encounter can afford police the ability to assess many of the elements that are relevant to determining whether information is sufficiently reliable to warrant police action. A face-to-face encounter provides police officers the opportunity to perceive and evaluate personally an informant's mannerisms, expressions, and tone of voice (and, thus, to assess the informant's veracity more readily than could be done from a purely anonymous telephone tip). In-person communications also tend to be more reliable because, having revealed one's physical appearance and location, the informant knows that she can be tracked down and held accountable if her assertions prove inaccurate. Finally, a face-to-face encounter often provides a window into an informant's represented basis of knowledge; for example, her physical presence at or near the scene of the reported events can confirm that she acquired her information through first-hand observation"); [Heard](#), 367 F.3d at 1279 ("A face-to-face anonymous tip is presumed to be inherently more reliable than an anonymous telephone tip because the

officers receiving the information have an opportunity to observe the demeanor and perceived credibility of the informant"); [United States v. Valentine](#), 232 F.3d 350, 354 (3d Cir. 2000), cert. denied, 532 U.S. 1014 (2001)(Noting "a tip given face to face is more reliable than an anonymous telephone call," in that, "when an informant relates information to the police face to face, the officer has an opportunity to assess the informant's credibility and demeanor"); [United States v. Christmas](#), 222 F.3d 141, 144 (4th Cir. 2000), cert. denied, 531 U.S. 1098 (2001)(Noting "face-to-face encounter[s] ... [do] did not pose this same credibility problem[s]" as do anonymous telephone tips); [United States v. Salazar](#), 945 F.2d 47, 50-51 (2d Cir. 1991), cert. denied, 504 U.S. 923 (1992)(Noting "a face-to-face informant must, as a general matter, be thought more reliable than an anonymous telephone tipster, for the former runs the greater risk that he may be held accountable if his information proves false"); [United States v. Sierra-Hernandez](#), 581 F.2d 760, 763 (9th Cir.), cert. denied, 439 U.S. 936 (1978) ("Unlike a person who makes an anonymous telephone call, this informant confronted the agent directly").

- (7) **The Timeliness of the Source's Report.** See, e.g., [White](#), 407 U.S. at 147 (Noting that, "when the victim of a street crime seeks immediate police aid and gives a description of his assailant," immediate action may be required); [Terry-Crespo](#), 356 F.3d at 1177 (Noting "police may ascribe greater reliability to a tip, even an anonymous one, where an informant 'was reporting what he had observed moments ago,' not stale or second-hand information")(citations omitted); [Wheat](#), 278 F.3d at 731;

[Thompson](#), 234 F.3d at 729 (Noting that “the recency and the proximity” of the tipster’s observation “suggested that it would prove accurate”); [Valentine](#), 232 F.3d at 354 (Noting “officers could expect that the informant had a reasonable basis for his beliefs,” in that “the officers ... knew that the informant was reporting what he had observed moments ago, not what he learned from stale or second-hand sources”); [Gonzalez](#), 190 F.3d at 672 (Among factors to be considered in determining whether tip establishes reasonable suspicion is “whether the tip or report concerns active or recent activity, or has instead gone stale”).

- (8) **Whether the Source Provided Information Concerning a Neighbor of or Someone Who Lived Close to the Source.** See, e.g., [Christmas](#), 222 F.3d at 144. (“By informing the police about her neighbors’ illegal activity, the informant exposed herself to the risk of reprisal. The fact that she provided the report to uniformed police officers in public only increased the probability that someone associated with the illegal activity would witness her aid to the police”); [Valentine](#), 232 F.3d at 354 (“[W]hen an informant gives the police information about a neighbor ... or someone nearby ... the informant is exposed to a risk of retaliation from the person named, making it less likely that the informant will lie”).

- f. **Various Factors Can Be Used to Justify Investigative Detentions.** Law enforcement officers can utilize a wide variety of factors to justify an investigative detention. “Acts that in isolation may be ‘innocent in itself’ or at least susceptible to an innocent interpretation, may collectively amount to reasonable suspicion.” [United States v. Nelson](#), 284 F.3d 472, 480 (3rd Cir. 2002)(citation omitted). Thus, entirely innocent conduct can, in appropriate instances, justify a [Terry](#) stop. See [Reid v. Georgia](#), 448 U.S. 438, 441 (1980)(per curiam)(“There could, of course, be

circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot”); [United States v. Arvizu](#), 534 U.S. 266, 277-278 (2002) (“Undoubtedly, each of these factors alone is susceptible to innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for Stoddard’s stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment”). Some common factors used by officers to justify an investigative detention include:

- 1) **A Suspect’s Nervousness is a Factor That Can Be Used to Justify an Investigative Stop.** A suspect’s nervousness is a factor that can be considered in determining whether reasonable suspicion exists to support an investigative detention. *See, e.g., Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)(Noting that Court recognized “nervous, evasive behavior is a pertinent factor in determining reasonable suspicion”)(citations omitted); [United States v. Bloomfield](#), 40 F.3d 910 (8th Cir. 1994), *cert. denied*, 514 U.S. 1113 (1995)(“Although it is customary for people to be ‘somewhat nervous’ when Roberts pulls them over, it is unusual for people to ‘fidget’ as Bloomfield did when the stop is a ‘normal routine’ traffic stop”); [United States v. Palomino](#), 100 F.3d 446 (6th Cir. 1996)(Noting “nervousness of a defendant is a factor which can lead to a finding of reasonable suspicion,” although “nervousness alone is not a sufficient ground upon which to base a finding of reasonable suspicion”); [United States v. Jones](#), 269 F.3d 919, 928 (8th Cir. 2001)(“Nervousness combined with several other more revealing facts can generate reasonable suspicion”).

NOTE: Notwithstanding the above, a law enforcement officer should remember that, while nervousness is a pertinent factor a law enforcement officer could consider in determining if criminal activity was occurring, its value is limited, because “even innocent people can display some nervousness when being questioned by police.” [Johnson](#), 364 F.3d at 1192. *See, e.g., United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997) (Reiterating that “nervousness is of limited significance in determining reasonable suspicion and that the government’s repetitive reliance on ...

nervousness ... as a basis for reasonable suspicion ... must be treated with caution”); [Jones](#), 269 F.3d at 928 (While acknowledging nervousness as a factor, emphasizing that “generally, however, ‘nervousness is of limited significance in determining reasonable suspicion’”) (citation omitted).

- 2) **A Suspect’s Criminal History Can Be Considered to Justify an Investigative Detention.** A suspect’s criminal history may be utilized as a factor to justify an investigative detention, although standing alone it does not establish reasonable suspicion. See, e.g., [Perkins](#), 363 F.3d at (“Officer Burdette identified the passenger in the car as a known drug user who lived on Knox Avenue, which further reinforced his suspicions of possible drug activity”); [Wood](#), 106 F.3d at 949 (Cautioning that “prior criminal involvement alone is insufficient to give rise to the necessary reasonable suspicion to justify shifting the focus of an investigative detention from a traffic stop to a narcotics or weapons investigation. If the law were otherwise, any person with any sort of criminal record ... could be subjected to a [Terry](#)-type investigative stop by a law enforcement officer at any time without the need for any other justification at all”)(citations omitted); [Palomino](#), 100 F.3d at 450 (“Investigation which revealed Palomino’s past involvement in criminal activities” one factor justifying reasonable suspicion of criminal activity).
- 3) **Knowledge of Recent Criminal Conduct.** Where a law enforcement officer has “[k]nowledge of ... recent relevant criminal conduct,” this knowledge “is a permissible component of the articulable suspicion required for a [Terry](#) stop.” [United States v. Feliciano](#), 45 F.3d 1070, 1074 (7th Cir.), cert. denied, 516 U.S. 853 (1995).
- 4) **The Time and Location of a Situation are Factors That Can Be Considered in Determining Whether Reasonable Suspicion Exists.** The time and location of a given situation may be factors to consider in determining whether reasonable suspicion exists. See, e.g., [United States v. Lenoir](#), 318 F.3d 725, 729 (7th Cir.), cert. denied, ___ U.S. ___, 124 S. Ct. 110 (2003)(“Police observation of an individual, fitting a police dispatch description of a person

involved in a disturbance, ***near in time and geographic location to the disturbance***, establishes a reasonable suspicion that the individual is the subject of the dispatch”(emphasis added); [United States v. Edmonds](#), 240 F.3d 55, 60 (D.C. Cir. 2001)(Court noted that the defendant’s “presence in a van parked after hours in a school lot known to be the site of numerous drug transactions” contributed to finding of reasonable suspicion).

- 5) **A Suspect’s Flight Upon Observing Law Enforcement Officers Can Be Considered in Determining Whether Reasonable Suspicion Exists.** A suspect’s flight upon observing law enforcement officers may be considered in determining whether reasonable suspicion exists. See, e.g., [Illinois v. Wardlow](#), 528 U.S. 119, 124 (2000)(“Headlong flight - wherever it occurs - is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such”); [United States v. Bonner](#), 363 F.3d 213, 217 (3rd Cir. 2004)(Noting that, while the Supreme Court “has never held unprovoked flight alone is enough to justify a stop,” the Court has held, however, “that flight upon noticing police, plus some other indicia of wrongdoing, can constitute reasonable suspicion”).

NOTE: In [Bonner](#), *supra*, a vehicle was lawfully stopped by the police. Before the officers could approach, however, one of the passengers jumped out of the car and fled. The police gave chase and ultimately seized the passenger, who was found to have drugs on his person. The defendant alleged his seizure was unlawful because the only reason the police had to stop him was his flight. In rejecting this contention, the Third Circuit Court of Appeals held that “[f]light from a non-consensual, legitimate traffic stop (in which the officers are authorized to exert superintendence and control over the occupants of the car) gives rise to reasonable suspicion.” [Id.](#) at 218.

- 6) **A Suspect’s Presence in a High Crime Area Can Be Considered.** A suspect’s presence in a high crime area, when combined with other factors, can support reasonable suspicion. See, e.g., [Brown v. Texas](#), 443 U.S. 47, 52 (1979)(“The fact that appellant

was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct”); [Wardlow](#), 528 U.S. at 124 (“An individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime”)(citation omitted); [Baskin](#), 401 F.3d 788, 793 (7th Cir. 2005) (Suspect’s apparent flight, combined with his close proximity to “a newly discovered methamphetamine lab in an otherwise remote county park at a time when most people are asleep,” justified [Terry](#) stop); [Bonner](#), 363 F.3d at 217 (“Mere presence in an area known for high crime does not give rise to reasonable suspicion for a stop”); [United States v. Mayo](#), 361 F.3d 802, 807 (4th Cir. 2004) (“Although standing alone this factor may not be the basis for reasonable suspicion to stop anyone in the area, it is a factor that may be considered along with others to determine whether police have a reasonable suspicion based on the totality of the circumstances”) (internal citation omitted).

- 7) **A Suspect’s Behavior May Be Considered.** See, e.g., [United States v. Maguire](#), 359 F.3d 71, 77 (1st Cir. 2004)(Reasonable suspicion existed, in part, based upon suspect’s “disheveled” appearance, and responses to officers’ questions that were “less than forthcoming” and provided while he was “walking away from the officers”); [United States v. McCarthy](#), 77 F.3d 522, 531 (1st Cir.), cert. denied, 519 U.S. 991 (1996)(Finding that providing vague and evasive responses to officers’ questions is relevant in evaluating the propriety of a [Terry](#) stop).
- 8) **Profiles May Be Used to Support an Investigative Detention.** In [United States v. Sokolow](#), 490 U.S. 1, 10 (1989), the Supreme Court approved the use of a “drug courier profile” by federal agents. As noted by the Court: “A court sitting to determine the existence of reasonable suspicion must require the agent to articulate the factors leading to that conclusion, but the fact that these factors may be set forth in a ‘profile’ does not somehow detract from their evidentiary significance as seen by a trained agent.” [Id.](#)

g. **The Length of an Investigative Detention Must Be**

Reasonable. "An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." [Florida v. Royer](#), 460 U.S. 491, 500 (1983). "The investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." [Id.](#) Furthermore, "it is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." [Id.](#) So, while a [Terry](#) stop "permits law enforcement to detain a person briefly in order to investigate the circumstances that provoke suspicion," [United States v. Brignoni-Ponce](#), 422 U.S. 873, 881 (1975), "when a law enforcement officer no longer has any reasonable suspicions of criminal activity, the detained individual is constitutionally free to leave." [Erwin](#), 155 F.3d at 823. If an investigative stop extends beyond its lawful duration, then a *de facto* arrest requiring probable cause has occurred.

- 1) **There is No Bright-Line Time Limit for Investigative Stops.** "There is no talismanic time beyond which any stop initially justified on the basis of [Terry](#) becomes an unreasonable seizure under the Fourth Amendment." [United States v. Davies](#), 768 F.2d 893, 901 (7th Cir.), *cert. denied*, 474 U.S. 1008 (1985). See, e.g., [United States v. Place](#), 462 U.S. 696, 709-10 (1983)(Court declined to adopt any outside time limitation on a permissible [Terry](#) stop, but held that a ninety-minute detention of luggage was unreasonable based on all the facts); [United States v. Acosta](#), 363 F.3d 1141, 1147 (11th Cir. 2004)("There is no rigid time limitation or bright line rule regarding the permissible duration of a [Terry](#) stop")(citation omitted); [United States v. Vega](#), 72 F.3d 507, 514-16 (7th Cir. 1995)(Court upheld a sixty-two minute stop, citing the "objective reasonableness" of the officer's actions).
- 2) **A Long Duration Does Not Automatically Mean an Arrest Has Occurred.** Thus, "a long duration ... does not by itself transform an otherwise valid stop into an arrest." [United States v. Owens](#), 167 F.3d 739, 749 (1st Cir.), *cert. denied*, 528 U.S. 894 (1999). Instead, courts must examine "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the

defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." [United States v. Sharpe](#), 470 U.S. 675, 686 (1985)(citations omitted). Thus, while "there is "no rigid time limitation on [Terry](#) stops," [id.](#) at 685, a stop may be too long if it involves "delay unnecessary to the legitimate investigation of the law enforcement officers," [id.](#) at 687.

- 3) **Other Factors Must Be Considered in Determining Whether an Investigative Detention was of Lawful Duration.** "Time of detention cannot be the sole criteria for measuring the intrusiveness of the detention. Clearly, from the perspective of the detainee, other factors, including the force used to detain the individual, the restrictions placed on his or her personal movement, and the information conveyed to the detainee concerning the reasons for the stop and its impact on his or her rights, affect the nature and extent of the intrusion and, thus, should factor into the analysis." [McCarthy](#), 77 F.3d at 530.

- h. **The Use of Force During an Investigative Detention Must Be Reasonable.** The Supreme Court "has long recognized that the right to make an ... investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." [Graham v. Connor](#), 490 U.S. 386, 396 (1989). "The 'mere use ... of force in making a stop will not necessarily convert a stop into an arrest [When the] surrounding circumstances give rise to a justifiable fear for personal safety, a seizure effectuated with weapons drawn may properly be considered an investigative stop.'" [United States v. Heath](#), 259 F.3d 522, 530 (6th Cir. 2001). *See also* [United States v. Vargas](#), 369 F.3d 98, 102 (2d Cir. 2004)("[A]lthough under ordinary circumstances, drawing weapons and using handcuffs are not part of a [Terry](#) stop, intrusive and aggressive police conduct' is not an arrest 'when it is a reasonable response to legitimate safety concerns on the part of the investigating officers'")(citation and internal brackets omitted); [United States v. Johnson](#), 364 F.3d 1185, 1194 (10th Cir. 2004)("An officer may take reasonable precautions to protect his safety during an investigative detention"); [United States v. Fisher](#), 364 F.3d 970, 973 (8th Cir. 2004)("It is well established ... that when officers are presented with serious danger in the course of carrying out an investigative detention, they may

brandish weapons or even constrain the suspect with handcuffs in order to control the scene and protect their safety”); [United States v. Miles](#), 247 F.3d 1009, 1012 (9th Cir. 2001)(Noting that the court allows “intrusive and aggressive police conduct without deeming it an arrest ... when it is a reasonable response to legitimate safety concerns on the part of the investigating officers”); [United States v. Zapata](#), 18 F.3d 971, 976-77 (1st Cir. 1994) (Holding that slight physical touching cannot, on its own, produce a de facto arrest).

- 1) **Pointing of Guns.** “There is no per se rule that pointing guns at people ... constitutes an arrest.” [Baker v. Monroe Township](#), 50 F.3d 1186, 1193 (3rd Cir. 1995). Instead, “the use of guns in connection with a stop is permissible where the police reasonably believe the weapons are necessary for their protection.” [United States v. Perdue](#), 8 F.3d 1455, 1462 (10th Cir. 1993)(internal quotation marks, brackets, and citations omitted). See, e.g., [Maguire](#), 359 F.3d at 78 (“It is well established that the use or display of a weapon does not alone turn an investigatory stop into a de facto arrest”)[citing [United States v. Trueber](#), 238 F.3d 79, 94 (1st Cir. 2001)]; [United States v. Navarrete-Barron](#), 192 F.3d 786, 791 (8th Cir. 1999); [United States v. Alvarez](#), 899 F.2d 833, 838 (9th Cir. 1990), cert. denied, 498 U.S. 1024 (1991); [United States v. Taylor](#), 857 F.2d 210, 214 (4th Cir. 1988); [United States v. Serna-Barreto](#), 842 F.2d 965, 968 (7th Cir. 1988); [United States v. Jones](#), 759 F.2d 633, 638 (8th Cir.), cert. denied, 474 U.S. 837 (1985); [United States v. Roper](#), 702 F.2d 984, 987-88 (11th Cir. 1983); [United States v. Jackson](#), 652 F.2d 244, 249 (2d Cir.), cert. denied, 454 U.S. 1057 (1981).
- 2) **Use of Handcuffs.** “Nor does the use of handcuffs exceed the bounds of a [Terry](#) stop, so long as the circumstances warrant that precaution.” [Houston v. Clark County Sheriff Deputy John Does 1-5](#), 174 F.3d 809, 815 (6th Cir. 1999). As one court has noted: “Because safety may require the police to freeze temporarily a potentially dangerous situation ... the use of handcuffs may be part of a reasonable [Terry](#) stop.” [United States v. Merkley](#), 988 F.2d 1062, 1064 (10th Cir. 1993). See, e.g., [Navarette](#), 192 F.3d 791; [Perdue](#), 8 F.3d at 1463; [United States v. Esieke](#), 940 F.2d 29, 36 (2d Cir.), cert. denied, 502 U.S. 992

(1991); [United States v. Crittendon](#), 883 F.2d 326, 329 (4th Cir. 1989); [United States v. Hastamorir](#), 881 F.2d 1551, 1557 (11th Cir. 1989).

- 3) **When Does the Amount of Force Used Turn an Investigative Detention Into an Arrest?** In determining whether the amount of force used during an investigative detention has turned the stop into an arrest, courts consider a number of factors, including:
- a) **The number of officers and police cars involved;**
 - b) **The nature of the crime and whether there is reason to believe the suspect is armed;**
 - c) **The strength of the officer's articulable, objective suspicions;**
 - d) **The need for immediate action by the officer;**
 - e) **The presence or lack of suspicious behavior or movement by the person under observation;**
 - f) **Whether there was an opportunity for the officer to have made the stop in less threatening circumstances.**

[United States v. Thompson](#), 906 F.2d 1292, 1296 (8th Cir.), cert. denied, 498 U.S. 989 (1990).

- i. **A Suspect's Refusal to Cooperate May Not Be Used to Justify an Investigative Detention.** The Supreme Court has "consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." [Bostick](#), 501 U.S. at 437 [citing [INS v. Delgado](#), 466 U.S. 210, 216-217 (1984); [Royer](#), 460 U.S. at 498 (plurality opinion); [Brown v. Texas](#), 443 U.S. 47, 52-53 (1979)]; [Mayo](#), 361 F.3d at 806 (4th Cir. 2004)("A suspect's refusal to cooperate with police, without more, does not satisfy [Terry](#) stop requirements"); [United States v. Wood](#), 106 F.3d 942, 946 (10th Cir. 1997)("The failure to consent to a search cannot form any part of the basis for reasonable suspicion").
- j. **Police Officers May Require a Suspect to Identify Himself During an Investigative Detention.** The Supreme Court has long recognized the importance of determining a suspect's identity during a [Terry](#) stop. See, e.g., [Michigan v. Summers](#), 452 U.S. 692, 700 n.12 (1981)("It is clear that

there are several investigative techniques which may be utilized effectively in the course of a [Terry](#)-type stop. The most common is interrogation, which may include both a request for identification and inquiry concerning the suspicious conduct of the person detained”(citation omitted)(emphasis added); [Adams v. Williams](#), 407 U.S. 143, 146 (1972)(Noting “[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time”)(emphasis added). Accordingly, where a suspect refuses during a valid [Terry](#) stop to provide his name, he may be arrested for that refusal under a **state’s** “stop and identify” statute. [Hiibel v. Sixth Judicial District Court](#), 542 U.S. 177, 188 (2004)(“A state law requiring a suspect to disclose his name in the course of a valid [Terry](#) stop is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures”).

8. **During an Investigative Detention, a Suspect May Be Patted-Down for Weapons in Certain Circumstances.** In [Terry](#), *supra*, the Supreme Court outlined the legal requirements for what has become known as a “[Terry](#) frisk.” If, during an investigative detention, a law enforcement officer develops reasonable suspicion that the individual is presently armed and dangerous, the officer may conduct a limited pat-down search of the individual for weapons. However, “[a] [Terry](#) stop cannot be used as the basis of a ‘full search’ that would normally be warranted only by the existence of probable cause, consent, or a valid arrest.” [United States v. Hardy](#), 855 F.2d 753, 759 (11th Cir. 1988), *cert. denied*, 489 U.S. 1019 (1989)(citation omitted).
 - a. **Terry Frisk Defined.** A [Terry](#) frisk is a pat-down search of a suspect’s outer clothing to discover weapons that could be used during an investigative stop. A law enforcement officer may not utilize a [Terry](#) frisk in an effort to look for evidence of a crime. See [Adams v. Williams](#), 407 U.S. 143, 146 (1972)(“The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence”); [Minnesota v. Dickerson](#), 508 U.S. 366, 373 (1993)(“If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under [Terry](#) and its fruits will be suppressed”). Nonetheless, if evidence is uncovered during valid [Terry](#) frisk for weapons, the evidence can be seized and used against the suspect. This concept will be discussed in the “Plain Touch” section, below.

NOTE: It should be noted that “[Terry](#) does not in terms limit a weapons search to a so-called ‘pat-down’ search. Any limited intrusion designed to discover guns, knives, clubs or other instruments of assault are permissible.” [United States v. Reyes](#), 394 F.3d 219, 225 (5th Cir. 2003), cert. denied, 540 U.S. 1228 (2004) [*citing* [United States v. Hill](#), 545 F.2d 1191, 1193 (9th Cir. 1976)]. So, for example, “the raising of a suspect’s shirt by a law enforcement officer does not violate the bounds established by [Terry](#).” [United States v. Jackson](#), 390 F.3d 393, 399 (5th Cir. 2004)(citation omitted), vacated on other grounds, 544 U.S. 917 (2005), nor “does directing a suspect to lift his shirt to permit an inspection for weapons.” [Reyes](#), 349 F.3d at 225. See also [United States v. Edmonds](#), 1998 U.S. App. LEXIS 10807, at *11-12 (4th Cir.), cert. denied, 525 U.S. 912 (1998) (Officer’s actions in directing suspect to lift shirt, then raising corner of suspect’s baggy shirt after suspect refused to do so, “represented a sensible safety measure, while only minimally intruding on Edmonds’ personal security”); [United States v. Baker](#), 78 F.3d 135, 138 (4th Cir. 1996), cert. denied, 522 U.S. 1051 (1998) (“Directing that he raise his shirt required little movement by Baker and allowed Officer Pope to immediately determine whether Baker was armed without having to come in close contact with him. And, it minimized the risk that he could draw his weapon before Officer Pope could attempt to neutralize the potential threat. ... Indeed, this act was less intrusive than the patdown frisk sanctioned in [Terry](#)”).

- b. **An Officer Must Meet Two Requirements to Justify a Terry Frisk.** In order to justify a [Terry](#) frisk, a law enforcement officer must demonstrate two things: First, that he had reasonable suspicion to stop the suspect; and second, that he had reasonable suspicion the suspect was armed and dangerous.

- 1) **The First Requirement For a Terry Frisk is That the Officer Have Reasonable Suspicion to Stop the Suspect.** The first requirement of a [Terry](#) frisk is that the officer have reasonable suspicion to stop the suspect. “Policemen have no more right to ‘pat down’ the outer clothing of passers-by, or persons to whom they address casual questions, than does any other citizen. [Terry](#), 392 U.S. at 32 (Harlan, J., concurring). Instead, “[i]f the frisk is justified in order to protect the

officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a forcible stop. Id. See also Adams, 407 U.S. at 146 (“***So long as the officer is entitled to make a forcible stop***, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose”)(internal footnote and citation omitted) (emphasis added); United States v. Burton, 228 F.3d 524, 528 (4th Cir. 2000)(“But an officer may not conduct this protective search for purposes of safety until he has a reasonable suspicion that supports the investigatory stop”).

At least one circuit disagrees with the “lawful stop” prerequisite of a Terry frisk. The Ninth Circuit has specifically recognized that a Terry stop and a Terry frisk are “two independent actions, each requiring separate justifications.” As such, a Terry frisk is authorized in a consensual encounter so long as there is reasonable suspicion that the person is presently armed and dangerous. United States v. Orman, 486 F.3d 1170, 1173-74 (9th Cir. 2007).

- 2) **The Second Requirement For a Terry Frisk is That the Officer Have Reasonable Suspicion That a Suspect is Armed and Dangerous.** In order to conduct a Terry frisk, a law enforcement officer must also have reasonable suspicion that a suspect is presently armed and dangerous. As noted in Terry, *supra*: “Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous ... he is entitled for the protection of himself and others in the area to conduct a carefully limited search....” Terry, 392 U.S. at 30.

- c. **A Terry Frisk is Limited to Those Areas Where a Weapon Could Be Located.** The frisk allowed by Terry, *supra* is limited in nature to looking in areas where weapons could be located. Terry, 392 U.S. at 229 (“The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover

guns, knives, clubs, or other hidden instruments for the assault of the police officer"); [Adams](#), 407 U.S. at 146 ("The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law").

- d. **A Terry Frisk May Be Permissible Even Where the Suspect Has Been Handcuffed.** A [Terry](#) frisk of a suspect may be conducted even after the suspect has been restrained through the use of handcuffs. See, e.g., [United States v. Sanders](#), 994 F.2d 200, 209-10 (5th Cir.), cert. denied, 510 U.S. 955, and cert. denied, 510 U.S. 1014 (1993)(In upholding frisk of handcuffed suspect, court noted: "Sander's argument is entirely dependent on the assumption that, by handcuffing a suspect, the police instantly and completely eliminate all risks that the suspect will flee or do them harm. As is sadly borne out in the statistics for police officers killed and assaulted in the line of duty each year, however, this assumption has no basis in fact"); [United States v. Holmes](#), 376 F.3d 270, 280 (4th Cir.), cert. denied, 543 U.S. 1011, 125 S. Ct. 633 (2004)(Frisk of vehicle upheld even though occupants had been removed and handcuffed based upon "the reasonable belief that the suspect [might] return to the vehicle following the conclusion of the [Terry](#) stop");
- e. **Terry Frisks of Containers are Allowed.** When reasonable suspicions exists that a suspect is presently armed and dangerous, a law enforcement officer may also frisk any containers in the suspect's possession. See, e.g., [United States v. Vigo](#), 487 F.2d 295, 298 (2d Cir. 1973). (Noting "a lady's handbag is the most likely place for a woman ... to conceal a weapon," the court upheld the frisk of a woman's purse as a "normal protective measure on the part of law enforcement authorities"); [United States v. Miller](#), 468 F.2d 1041, 1045 (4th Cir. 1972), cert. denied, 410 U.S. 935 (1973)(Frisk of woman's handbag found reasonable where facts supported officer's belief "that she might be armed"); [United States v. Barlin](#), 686 F.2d 81, 87 (2d Cir. 1982)(Frisk of purse permissible where "so long as the purse remained unopened, it was a source of danger to the agents"); [United States v. McClinnhan](#), 660 F.2d 500, 504 (D.C. Cir. 1981)(Frisk of briefcase upheld where "merely separating McClinnhan from his briefcase ... would obviate the danger only for the length of the stop; at some point, they

would be compelled to return the briefcase to appellant and thus place themselves in the very danger they sought to avoid”); [United States v. Flippin](#), 924 F.2d 163, 164 - 167 (9th Cir. 1991)(Frisk of make-up bag permissible where officer believed the bag contained a weapon “because the bag felt heavy” and “merely gaining control of the bag did not dissipate the danger and exigent circumstances”).

NOTE: Students often ask whether a container may be opened during a “frisk,” or if they are limited to simply feeling the outside of the bag for weapons. When the container is hard-sided (e.g., a briefcase), the answer to this question is obvious. Soft-sided containers may appear to present a more difficult question, but that doesn’t seem to have originated. Useful on this point is [United States v. Shranklen](#), 315 F.3d 959, 964 (8th Cir.), cert. denied sub nom. [Fleming v. United States](#), 538 U.S. 971 (2003). There, officers opened a pouch found during a traffic stop of a vehicle. In finding that the officer “was not constitutionally required to pat down the pouch instead of opening it.” [Id.](#) at 963, in that “there is no guarantee that merely feeling the pouch would have led [the officer] to discover the weapon.” [Id.](#) at 964. The court continued: “For example, some type of padding could have enveloped the weapon, or the weapon could have been a pocketknife with an unexposed blade. It was therefore reasonable for [the officer] to open the pouch in order to inspect for weapons with his sense of sight and not solely with his sense of touch. We also note the resemblance here to [Long](#), where police officers searched a car for weapons and found a pouch. Upon looking inside the pouch, the officers discovered it contained marijuana; the Supreme Court gave no indication that the officers should have patted down the pouch first.” [Id.](#)

- f. **Establishing Reasonable Suspicion to Frisk a Suspect Can Be Established in a Variety of Ways.** As with investigative stops (see subparagraph (5)(c), above), law enforcement officers may establish reasonable suspicion that a suspect is presently armed and dangerous in a variety of different means, including:

- 1) **Personal Observations;**
- 2) **Information From Other Officers;** and
- 3) **Information From Third Parties.**

g. **Various Factors Can Be Used to Justify a Terry Frisk.**

As with investigative stops, the list of factors that may be used as justification for a [Terry](#) frisk is extensive. “[T]he standard is whether the pat-down search is justified in the totality of circumstances, even if each individual indicator would not by itself justify the intrusion.” [United States v. Brown](#), 188 F.3d 860, 865 (7th Cir. 1999). The courts will consider the officer’s opinion, based on training and experience, as to whether certain facts and circumstances demonstrated a legitimate threat. [United States v. Rideau](#), 969 F.2d 1572, 1575 (“Trained, experienced officers. . . may perceive danger where an untrained observer would not.”) Among the most common factors used by law enforcement officers to justify a [Terry](#) frisk are the following:

1) **A Suspect’s Reputation May Be Considered.**

“[R]easonable suspicion of a suspect’s dangerousness need not be based solely on activities observed by the police during or just before the relevant police encounter, but can be based on the suspect’s commission of violent crimes in the past - especially when those crimes indicate a high likelihood that the suspect will be ‘armed and dangerous’ when encountered in the future.” [Holmes](#), 376 F.3d at 278 (Upholding frisk based, in part, on officer’s knowledge “of the suspects’ criminal history *and* that the gang to which the suspects belonged was known to be armed”). Thus, where a suspect has a reputation for being armed and dangerous, such as through his past criminal history or association with violent gangs, a law enforcement officer can use this fact as justification for a [Terry](#) frisk. See, e.g., [United States v. Perrin](#), 45 F.3d 869, 873 (4th Cir.), cert. denied, 515 U.S. 1126 (1995) (Among factors justifying frisk of the defendant was his “violent criminal past”); [United States v. Strahan](#), 984 F.2d 155, 157 (6th Cir. 1993)([Terry](#) frisk justified, in part, because of “the defendant’s alleged membership in the Banditos motorcycle gang, a group whose members carry weapons”).

2) **A Bulge in the Suspect’s Clothing May Be Considered.**

A bulge in a suspect’s clothing that could mean the presence of a weapon is a factor that law enforcement officers can use to justify a [Terry](#) frisk. [Pennsylvania v. Mimms](#), 434 U.S. 106, 112 (1977)(“The bulge in the jacket permitted the officer to conclude that Mimms was armed and thus posed a

serious and present danger to the safety of the officer. In these circumstances, any man of 'reasonable caution' would likely have conducted the 'pat-down').

- 3) **Where a Suspect Makes Furtive Movements, That Factor Can Be Used to Justify a Terry Frisk.** A "furtive" movement by the defendant is a factor that can be used to justify a [Terry](#) frisk. See, e.g., [United States v. Holmes](#), 385 F.3d 786, 789 (D.C. Cir. 2004)(Upholding frisk of suspect in part because during the traffic stop, the officer observed the suspect "reaching under his seat as if to hide or retrieve a weapon"); [United States v. Cash](#), 378 F.3d 745, 748 (8th Cir. 2004)("Cash's extreme nervousness toward the officers and her furtiveness in concealing the shopping bag from the officers were significant factors which ... may establish reasonable suspicion for a [Terry](#) stop and frisk") [United States v. Michelletti](#), 991 F.2d 183, 185 (5th Cir. 1993), *reh'g en banc*, 13 F.3d 838 (5th Cir.), *cert. denied*, 513 U.S. 829 (1994)("The fact that he kept his right hand in his pocket at all times, given the surrounding circumstances, was reason enough to suspect Michelletti of possibly being armed and warranted the pat down frisk for the officers' and, possibly, the bystanders' safety"); [United States v. Quarles](#), 955 F.2d 498, 501-502 (8th Cir.), *cert. denied*, 504 U.S. 944 (1992)("Officer Flaherty's decision to frisk Brown to determine if he was armed was permissible, especially since Flaherty saw Brown put his hands inside his pants").
- 4) **The Suspect's Behavior.** During a [Terry](#) stop, a suspect's words and actions can give rise to the reasonable suspicion necessary to conduct a frisk. See, e.g., [Holmes](#), 385 F.3d at 790 (Frisk of suspect justified in part where suspect had been drinking and "continuously reached for his pocket despite repeatedly being directed not to do so" by the officer); [United States v. Wallen](#), 388 F.3d 161, 166-67 (5th Cir. 2004)(Frisk of vehicle justified, in part, on fact that suspect "disobeyed [the officer's] instruction to 'hang tight' at the rear of the truck," then "delayed in complying with the instruction to return when he subsequently left his position"); [United States v. Rideau](#), 969 F.3d 1572, 1575 (5th Cir. 1992) (detainee's act of backing away from officer could, under the circumstances, be construed as an attempt

to gain room to use a weapon); United States v. Bell, 762 F.2d 495, 501 (6th Cir. 1985) (“Bell’s failure to follow [the FBI agent’s] instructions [to put his hands on the dashboard] would significantly and immediately heighten the level of concern upon the part of the officer”); United States v. Brown, 188 F.3d 860, 865 (7th Cir. 1999) (detainee “was more nervous than one would expect in a routine traffic stop,” and kept “repeatedly glancing back towards the car in question”).

- 5) **The Nature of Offense Under Investigation Can Be Considered in Determining Whether a Frisk is Justified.** “A police officer may base his belief that a suspect is armed and dangerous on the nature of the criminal activity despite the fact that he did not personally observe any physical indication of a weapon such as a bulge.” United States v. Terry, 718 F. Supp. 1181, 1185 (S.D.N.Y. 1989), aff’d w/o opinion, 927 F.2d 593 (2d Cir. 1991). There are some offenses that are, by their very nature, crimes in which the perpetrators are armed and dangerous. In such cases, the nature of the offense under investigation can establish the reasonable suspicion necessary for a Terry frisk. These types of crimes may include, for example:

- a) **Robbery**, Terry, *supra* ;
- b) **Burglary and Car Theft**, United States v. Walker, 924 F.2d 1, 4 (1st Cir. 1991)(Frisk justified, in part, on the officer’s “experience that burglars often carry weapons or other dangerous objects”); United States v. Hanlon, 401 F.3d 926, 929 (8th Cir. 2005) (“[W]hen officers encounter suspected car thieves, they may also reasonably suspect that such individuals might possess weapons”);
- c) **Drug Trafficking**, Jacob, 377 F.3d at 579 (Noting that “officers who stop a person who is ‘reasonably suspected of carrying drugs’ are ‘entitled to rely on their experience and training in concluding that weapons are frequently used in drug transactions,’ and to take reasonable measures to protect themselves”)(citation omitted); United States v. Hernandez-Rivas, 348 F.3d 595, 599 (7th Cir. 2003)(Frisk upheld where wiretaps revealed suspect owned a

firearm and was engaged in drug trafficking, "a crime infused with violence") (citation omitted); [United States v. Scott](#), 270 F.3d 30, 41 (1st Cir. 2001), cert. denied, 535 U.S. 1007 (2002)("When the officer suspects a crime of violence, the same information that will support an investigatory stop will without more support a frisk This Circuit has extended that rule to encompass crimes commonly associated with violence, even though the criminal act itself may be nonviolent; an example is large-scale trafficking in illegal drugs"); [United States v. McMurray](#), 34 F.3d 1405, 1410 (8th Cir. 1994), cert. denied, 513 U.S. 1179 (1995)("The officers' reasonable suspicion that McMurray was dealing drugs provides an adequate basis for them to reasonably believe he might be armed and dangerous, because 'weapons and violence are frequently associated with drug transactions'")

- d) **Aggravated Assault.** [United States v. Shambry](#), 392 F.3d 631, 635 (3d Cir. 2004)("The frisk was also justified under [Terry](#) insofar as Officer Gramaglia had an articulable suspicion that Shambry had been involved in a crime of violence ...").

- h. **The "Plain Touch" Doctrine.** In [Minnesota v. Dickerson](#), 508 U.S. 366 (1993), the Supreme Court created what has become known as the "plain touch" doctrine. In sum, the "plain touch" doctrine is nothing more than an expansion of the "plain view" doctrine discussed in **EPO # 18**, below.

"If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." [Id.](#) at 375-376.

While the purpose of a [Terry](#) frisk is to discover weapons, not evidence of a crime, the Supreme Court has "already held that police officers, at least under certain circumstances, may seize contraband detected during the lawful execution of a [Terry](#) search." [Id.](#) at 374. See

[Michigan v. Long](#), 463 U.S. 1032, 1050 (1983) ("If, while conducting a legitimate [Terry](#) search ... the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances"); [United States v. Thomson](#), 354 F.3d 1197, 1200 (10th Cir. 2003) ("If the police detect a weapon or contraband during a [Terry](#) search, they are entitled to seize it. This is true whether the [Terry](#) search is a simple frisk or a limited search beyond the person of the suspect"). In order to lawfully seize evidence under the "plain touch" doctrine, three (3) requirements must be met.

- 1) **The First Element of the "Plain Touch" Doctrine is that the Frisk Must Be Lawful.** First, the frisk that led to the discovery of the evidence must have been lawful. Relying upon the reasoning of [Michigan v. Long](#), 463 U.S. 1032 (1983) and [United States v. Hensley](#), 469 U.S. 221 (1985), the Court held the "plain touch" doctrine applies only where a law enforcement officer "lawfully pats down a suspect's outer clothing." [Dickerson](#), 508 U.S. at 375; [Long](#), 436 U.S. at 1050 (Contraband discovered by officer "while conducting a legitimate [Terry](#) search" is admissible). Further, "the rationale of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a *lawful vantage point*, there has been ... no search independent of the initial intrusion that gave the officers their vantage point." [Id.](#) (emphasis added).
- 2) **The Second Element of the "Plain Touch" Doctrine is that the "Incriminating Nature of the Item Be Immediately Apparent."** Second, the incriminating nature of the item must be immediately apparent. This means a law enforcement officer must have probable cause that the object in plain view is subject to seizure, such as contraband. See [Dickerson](#), 508 U.S. at 375 ("If ... the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object – i.e., if 'its incriminating character is not immediately apparent' – the plain-view doctrine cannot justify its seizure"). As noted by the Court: "Regardless of whether the officer detects the contraband by sight or by touch ... the Fourth Amendment's requirement that the officer have

probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures." Id. at 376 (footnote omitted).

- 3). **The Third Element of the "Plain Touch" Doctrine is that it is Limited to the Initial Touch.** Finally, the "plain touch" doctrine is limited to the initial touch of the item by the law enforcement officer. In Dickerson, *supra*, the officer determined that the lump found in the defendant's pocket was contraband only after "squeezing, sliding and otherwise manipulating the contents of the defendant's pocket." Id. at 378. The Court found this type of manipulation unlawful: "Here, the officer's continued exploration of [Dickerson's] pocket after having concluded that it contained no weapon was unrelated to 'the sole justification of the search [under Terry:] ... the protection of the police officer and others nearby.' It therefore amounted to the sort of evidentiary search that Terry expressly refused to authorize, and that we have condemned in subsequent cases." Id. (emphasis added; internal citations omitted). Thus, "the police officer ... overstepped the bounds of the 'strictly circumscribed' search for weapons allowed under Terry." Id.

NOTE: The Third Circuit has rephrased this rule in a useful fashion, holding that an officer conducting a lawful frisk is allowed to slide or manipulate an object in a suspect's pocket, consistent with a routine frisk, until the officer is able to reasonably eliminate the possibility that the object is a weapon. "The proper question. . . is not the immediacy and certainty with which an officer knows an object to be contraband or the amount of manipulation required to acquire that knowledge, but rather what the officer believes the object is by the time he concludes that it is not a weapon." United States v. Yamba, 506 F.3d 251, 259 (3rd Cir. 2007). See also United States v. Mattarolo, 209 F.3d 1153, 1158 (9th Cir. 2000) ("Had the officer continued to manipulate the object beyond what was necessary to ascertain that it posed no threat, he would have run afoul of the Supreme Court's holding in *Minnesota v. Dickerson*."); and

United States v. Rogers, 129 F.3d 76, 79 (2nd. Cir. 1997).

- i. **Frisking the Companion of an Arrestee (The Automatic Companion Rule).** Some, but not all, federal courts have adopted the “automatic companion” rule, which grants a law enforcement officer the authority to lawfully conduct a “frisk” for weapons on any person who is accompanying an arrestee at the time of the arrest. “The Supreme Court has never directly addressed the applicability of the [Terry](#) exception to a search of the companion of an arrestee.” [United States v. Flett](#), 806 F.2d 823, 826 (8th Cir. 1986). While some guidance on this issue may be found in select Supreme Court decisions, such as [Terry](#) and [Ybarra v. Illinois](#), 444 U.S. 85 (1979), a lack of clear direction has resulted in a split among the United States Circuit Courts of Appeal over the constitutionality of the “automatic companion” rule.

- 1). **Three Circuits Have Adopted the Automatic Companion Rule.** Currently, three circuits (the Fourth, Seventh, and Ninth) have adopted a bright-line rule allowing law enforcement officers to “frisk” the companion of an arrestee. See [United States v. Berryhill](#), 445 F.2d 1189, 1193 (9th Cir. 1971)(“All companions of an arrestee within the immediate vicinity, capable of accomplishing a harmful assault on the officer, are constitutionally subjected to the cursory ‘pat-down’ reasonably necessary to give assurance that they are unarmed”); [United States v. Poms](#), 484 F.2d 919 (4th Cir. 1973)(per curiam)(Same); [United States v. Simmons](#), 567 F.2d 314 (7th Cir. 1977)(same).
- 2). **Two Circuits Have Expressly Rejected the Automatic Companion Rule.** Two circuits (the Sixth and Eighth) have rejected the “automatic companion” rule, expressing serious reservations about the rule’s constitutionality, based upon the Supreme Court’s rulings in both [Terry](#) and [Ybarra](#) regarding

individualized “reasonable suspicion.” In [United States v. Bell](#), 762 F.2d 495 (6th Cir.), cert. denied, 474 U.S. 853 (1985), the Sixth Circuit refused the government’s invitation to adopt the “automatic companion” rule, noting “serious reservations about the constitutionality of such a result under existing precedent.” [Id.](#) at 498. The Sixth Circuit again rejected the “automatic companion” rule in [United States v. Wilson](#), 506 F.3d 488, 494 (6th Cir. 2007), holding that the Terry requirement of reasonable suspicion has not been “eroded to the point that an individual may be frisked based upon nothing more than an unfortunate choice of associates.” (internal quotes and citation omitted). Similarly, in [United States v. Flett](#), 806 F.2d 823 (8th Cir. 1986), the Eighth Circuit refused to adopt the “automatic companion” rule, citing both [Terry](#) and [Ybarra](#) in support of its decision. In each of these cases, the courts emphasized that, while the single fact of companionship does not, standing alone, justify a frisk, “it is not irrelevant to the mix that should be considered in determining whether the agent’s actions were justified.” [Bell](#), 762 F.2d at 500. See also [Flett](#), 806 F.2d at 827; [Wilson](#), 506 F.3d at 494.

- j. **Vehicles - Investigative Stops and Terry Frisks.** “The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of [a] vehicle.” [United States v. Cortez](#), 449 U.S. 411, 417 (1981). “Stopping an automobile and detaining its occupants constitutes a ‘seizure’ within the meaning of [the Fourth Amendment, even though the purpose of the stop is limited and the resulting detention quite brief.” [Delaware v. Prouse](#), 440 U.S. 648, 653 (1979). As with any other type of “seizure,” “[a]n automobile stop is subject to the Fourth Amendment imperative that the stop must be reasonable.” [United States v. Ramos-Caraballo](#), 375 F.3d 797, 800 (8th Cir. 2004).

- 1) **Vehicle Stops Are Analogous to Investigative Detentions.** “Because a routine traffic stop is only a limited form of seizure, it is more analogous to an investigative detention than a custodial arrest.” [United States v. Purcell](#), 236 F.3d 1274, 1277 (11th Cir.), cert. denied, 534 U.S. 830 (2001). See [Berkemer v. McCarty](#), 468 U.S. 420, 439 (1984) (“The usual traffic stop is more analogous to a so-called ‘[Terry](#) stop,’ than to a formal arrest”)(internal citation

and footnote omitted); [United States v. Rosborough](#), 366 F.3d 1145, 1150 (10th Cir. 2004)(Noting that “investigative detentions arising out of routine traffic stops are analyzed under the framework of [Terry](#) and its progeny”); [United States v. Garrido-Santana](#), 360 F.3d 565, 570-71 (6th Cir. 2004)(“A traffic stop is reasonable under the Fourth Amendment where the stop was both proper at its inception and ‘reasonably related in scope to the circumstances ... [that] justified the ... [stop] in the first place’”(citation omitted)).

- 2) **Driver and Passengers are “Seized” During a Traffic Stop.** When police stop a vehicle, both the driver and any passengers are effectively seized, giving passengers the right to challenge the legality of the stop and the admissibility of evidence discovered as a result. [Brendlin v. California](#), 127 S.Ct. 2400 (2007).
- 3) **Reasonable Suspicion is Required to Conduct a Vehicle Stop.** A law enforcement officer may conduct a traffic stop or other investigative stop of a vehicle if the officer has, at a minimum, reasonable suspicion that “the person stopped is, or is about to be, engaged in criminal activity.” [Cortez](#), 449 U.S. at 417.
 - a) **Observed Traffic Violations May Form the Basis For the Stop.** For example, “a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation.” [Manjarrez](#), 348 F.3d at 884. See also [United States v. Serena](#), 368 F.3d 1037, 1040 (8th Cir. 2004)(Traffic stop permitted where officer reasonably believed tags on vehicle were expired); [United States v. Williams](#), 359 F.3d 1019, 1021 (8th Cir. 2004) (Officer had probable cause for stop based upon stop-sign violation); [Bonner](#), 363 F.3d at 216 (“A police officer who observes a violation of state traffic laws may lawfully stop the car committing the violation”).

NOTE: All states have statutes that prohibit moving in and out of traffic lanes in an unsafe manner. See, e.g., S.D. Codified Laws 32-26-6 (“On a roadway divided into lanes, a vehicle shall be driven as nearly as practicable entirely within a

single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety”). One source of conflict between the Federal circuit courts of appeals concerns whether a single, isolated incident of crossing either the center or fog line is sufficient to establish a violation of these types of state statutes. In [United States v. Martinez](#), 354 F.3d 932 (8th Cir. 2004), the Eighth Circuit Court of Appeals held an officer’s traffic stop was justified, even though he “observed no traffic violations other than [a] single fog-line crossing ...” [Id.](#) at 934. Alternatively, both the Sixth and Tenth Circuit Courts of Appeals have found that a single crossing of the line was insufficient to justify a violation of the sort of statute discussed above. See [United States v. Freeman](#), 209 F.3d 464, 466 (6th Cir. 2000) (“We cannot, however, agree that one isolated incident of a large motor home partially weaving into the emergency lane for a few feet and in an instant in time constitutes a failure to keep the vehicle within a single lane ‘as nearly as practicable’”); [United States v. Gregory](#), 79 F.3d 973, 978 (10th Cir. 1996) (Noting that, under certain conditions, “any vehicle could be subject to an isolated incident of moving into the right shoulder of the roadway, without giving rise to a suspicion of criminal activity”).

- b) **Reasonable Suspicion a Vehicle is Carrying Contraband Will Justify a Stop.** A traffic stop is also permissible in situations where reasonable suspicion exists to believe the vehicle is carrying contraband. See [United States v. Singh](#), 363 F.3d 347, 355 (4th Cir. 2004) (Noting “it is elementary that the authorities are entitled to stop a moving vehicle reasonably suspected of involvement in smuggling contraband, and they may briefly detain and investigate such a vehicle and its occupants”).

- c) **Traffic Stops Are Permitted Where Reasonable Suspicions Exists to Believe a Driver or Occupant is Wanted For Past Criminal Conduct.** Similarly, “an officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct.” *Id.* at 417 n.2. See also [United States v. Botero-Ospina](#), 71 F.3d 783, 787 (10th Cir. 1995), *cert. denied*, 518 U.S. 1007 (1996)(Noting “a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring”).
- 4) **Permissible Actions During Vehicle Stops.** The Supreme Court has long recognized the very real dangers faced by law enforcement officers who confront suspects located in vehicles. See [Michigan v. Long](#), 463 U.S. 1032, 1048 (1983)(Noting “danger presented to police officers in ‘traffic stops’ and automobile situations”); [Pennsylvania v. Mimms](#), 434 U.S. 106, 110 (1977)(Decision rested, in part, on the “inordinate risk confronting an officer as he approaches a person seated in an automobile”); [Adams v. Williams](#), 407 U.S. 143, 148 n.3 (1972) (Citing a study indicating that “approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile”). For that reason, when law enforcement officers conduct vehicle stops, they may “take such steps as are reasonably necessary to protect their personal safety.” [United States v. Hensley](#), 469 U.S. 221, 235 (1985). This would include, for example, “the authority and duty to control the vehicle and its occupants, at least for a brief period of time.” [Bonner](#), 363 F.3d at 217. Some of the most common of those permissible actions are listed below.
- a) **The Driver May Be Removed From the Vehicle.** “Once a motor vehicle has been lawfully detained ... the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.” [Pennsylvania v. Mimms](#), 434 U.S. 106, 111 n.6 (1977). This is true even in situations where

the law enforcement officer has no reason to suspect "foul play." Id. at 109.

- b) **The Passengers May Be Removed From the Vehicle.** In Maryland v. Wilson, 519 U.S. 408 (1997), the Supreme Court extended the holding of Mimms to those who are passengers in the vehicle: "We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." Id. at 415.
- c) **The Passengers May Be Ordered to Remain in or Return to the Vehicle.** Of course a law enforcement officer may also order passengers to remain **inside** the vehicle during the stop. See Rogala v. District of Columbia, 161 F.3d 44, 53 (D.C. Cir. 1998) ("A police officer has the power to reasonably control the situation by requiring a passenger to remain in a vehicle during a traffic stop"); United States v. Moorefield, 111 F.3d 10, 13 (3d Cir. 1997) ("In view of the Supreme Court's ruling in Wilson, we have no hesitancy in holding that the officers lawfully ordered Moorefield to remain in the car with his hands in the air"); United States v. Clark, 337 F.3d 1282, 1287-88 (11th Cir. 2003)(same). Similarly, an officer may order a passenger to re-enter the vehicle during the stop if the passenger gets out of the car. United States v. Sanders, 510 F.3d 788 (8th Cir. 2007).
- d) **A Flashlight May Be Used to Illuminate the Interior of a Vehicle.** A law enforcement officer may also use a flashlight to illuminate the darkened interior of a vehicle. See Texas v. Brown, 460 U.S. 730, 739-740 (1983) (plurality opinion) ("It is likewise beyond dispute that Maples' action in shining his flashlight to illuminate the interior of Brown's car trenching upon no right secured to the latter by the Fourth Amendment Numerous other courts have agreed that the use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection")(footnote omitted).
- e) **Where Windows Are Heavily Tinted, They**

May Be Opened to Check for Weapons.

"When, during already dangerous traffic stops, officers must approach vehicles whose occupants and interiors are blocked from view by tinted windows, the potential harm to which the officers are exposed increases exponentially...." [United States v. Stanfield](#), 109 F.3d 976, 981 (4th Cir.), cert. denied, 522 U.S. 857 (1997). Accordingly, at least one court has held that "whenever, during a lawful traffic stop, officers are required to approach a vehicle with windows so heavily tinted that they are unable to view the interior of the stopped vehicle, they may, when it appears in their experienced judgment prudent to do so, open at least one of the vehicle's doors and, without crossing the plane of the vehicle, visually inspect its interior in order to ascertain whether the driver is armed, whether he has access to weapons, or whether there are other occupants of the vehicle who might pose a danger to the officers." [Id.](#)

- f) **Where a Passenger is Unable to Exit the Vehicle, Officers May Open The Door to Inspect the Occupant.** After ordering an occupant to exit a vehicle and hearing that he claims to be physically unable to do so, an officer may open the occupant's door and conduct a minimally necessary visual inspection of the occupant. If the inspection reveals articulable facts constituting reasonable suspicion that the occupant is armed and dangerous, he may be patted down to the same extent as he could have been if he had complied with the order to exit the vehicle. [United States v. Meredith](#), 480 F.3d 366 (5th Cir. 2007).
- g) **License and Registration Checks May Be Conducted.** Once an individual has been lawfully detained during a traffic stop, a law enforcement officer may investigate the driver's license and vehicle registration, seek consent to search the vehicle, and run a computer check for outstanding warrants. *See, e.g.,* [Singh](#), 363 F.3d at 357 ("Where reasonable suspicion exists to support the stop of a

moving vehicle, officers are entitled to conduct an investigatory detention to obtain consent to search or to develop probable cause"); [United States v. Simmons](#), 172 F.3d 775, 778 (11th Cir. 1999)("Once the police had validly detained Simmons, plainly they were entitled under the decisional law to conduct a variety of checks on the driver and his car, including questioning the driver about the traffic violation, requesting consent to search the car, and running a computer check for outstanding warrants"); [United States v. Allegree](#), 175 F.3d 648, 650 (8th Cir.), cert. denied, 528 U.S. 958 (1999)("A reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose"); [United States v. Dexter](#), 165 F.3d 1120, 1126 (7th Cir. 1999)("[W]hen a vehicle is pulled over, an officer may ask for a driver's license and registration as a routine matter"); [United States v. Mendez](#), 118 F.3d 1426, 1429 (10th Cir. 1997)("An officer conducting a routine traffic stop may run computer checks on the driver's license, the vehicle registration papers, and on whether the driver has any outstanding warrants or the vehicle has been reported stolen").

NOTE: "When a law enforcement officer is investigating a traffic violation or an accident, and the driver is unwilling or unable to produce the registration of the vehicle involved to the officer upon demand, it is reasonable for the officer to conduct a limited search for the registration in those areas where the registration would likely be located." [United States v. Kelly](#), 267 F. Supp. 2d 5, 14 (D.D.C. 2003). See also 3 W. LaFave, *Search and Seizure* § 7.4(d), p. 566 (3d ed. 1996) ("Under a variety of circumstances, it is reasonable for the police to make a limited search of a vehicle in an effort to determine ownership"); [Quezada v. Hubbard](#), 2002 U.S. Dist. LEXIS 13162, at *8

(D. Cal. 2002) (Where driver “did not produce his driver’s license or other identification, and the registration offered by the passenger could not be verified,” officer’s search of driver’s seat armrest, “which [was] a likely place for storage of a license and registration,” was permissible); [State v. Jones](#), 478 A.2d 424, 426 (N.J. Super. Ct. App. Div. 1984) (Noting that, “where there has been a traffic violation and the operator of the motor vehicle is unable to produce proof of registration, a police officer may search the car for evidence of ownership”); [State v. Taras](#), 504 P.2d 548, 552 (Ariz. Ct. App. 1972) (“Thus, we conclude that if a driver is unable to produce proof of registration, the officer may conduct a limited search of the car for evidence of automobile ownership”). These same principles would also apply to situations where a search is being conducted for ownership information regarding an abandoned vehicle. See, e.g., [Kelly](#), 267 F. Supp. 2d at 13 (Noting that “a police officer who encounters an abandoned car on a public highway may search the vehicle for the registration”); [Muegel v. State](#), 272 N.E. 2d 617, 620 (Ind. 1971) (Same).

- h) **Requests for Passengers’ Identification.**
Just as an officer may ask for the identification of the driver of a lawfully stopped vehicle, so he may request identification of the passengers also lawfully stopped. No separate showing is required. When an officer lawfully stops a vehicle, the identity of the persons in whose company the officer suddenly finds himself may be pertinent to the officer’s well-being. [United States v. Soriano-Jarquin](#), 492 F.3d 495 (4th Cir. 2007) (Eighth and Eleventh Circuits agree).
- i) **Questions Regarding Travel Plans May Be Asked.** “Questions about travel plans are routine and ‘may be asked as a matter of course without exceeding the proper scope of

a traffic stop.” [United States v. West](#), 219 F.3d 1171, 1176 (10th Cir. 2000). See also [United States v. Hill](#), 195 F.3d 258, 268 (6th Cir. 1999), cert. denied, 528 U.S. 1176 (2000) (Officer’s questions to suspect about his moving plans were reasonable, “in that the questions related to [the suspect’s] purpose for traveling”); [United States v. \\$ 404,905.00](#), 182 F.3d 643, 647 (8th Cir. 1999)(During lawful stop, “the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle, and he may act on whatever information is volunteered”). “Travel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop. For example, a motorist’s travel history and travel plans may help explain, or put into context, why the motorist was weaving (if tired) or speeding (if there was an urgency to the travel).” [United States v. Holt](#), 264 F.3d 1215, 1221(10th Cir. 2001).

j) **Questions Unrelated to the Purpose of the Traffic Stop May Be Asked If They Do Not Prolong the Stop.** An officer need not have separate reasonable suspicion or probable cause to ask questions unrelated to the reason for the traffic stop, so long as the questioning does not prolong the stop. [United States v. Mendez](#), 476 F.3d 1077 (9th Cir. 2007), citing [Muehler v. Mena](#), 544 U.S. 93 (2005).

k) **A Law Enforcement Officer is Not Required to Notify a Suspect He is Free to Leave Before Seeking Consent to Search.** As noted above, once a vehicle has been lawfully stopped, officers are lawfully entitled to request consent to search the vehicle. See [Simmons](#), 172 F.3d at 778. Additionally, a law enforcement officer who has lawfully detained a suspect during a vehicle stop is not required to inform the suspect that he or she is free to leave before obtaining a valid consent to search. [Ohio v. Robinette](#), 519 U.S. 33, 40 (1996)

5) **Terry Frisks of Vehicles.** In [Michigan v. Long](#), 463

U.S. 1032 (1983), the Supreme Court expanded the scope of a [Terry](#) frisk to include vehicles. See [United States v. Wallen](#), 388 F.3d 161, 165 (5th Cir. 2004) ("The Supreme Court determined that protective pat-down/frisk searches authorized by [Terry v. Ohio](#) extend to ... automobiles...."). Accordingly, a law enforcement officer "may pat down the occupants of [a] vehicle and conduct a search of the passenger compartment, if he has reasonable suspicion that the occupants might be armed and dangerous." [Bonner](#), 363 F.3d at 216. Compare [United States v. Baker](#), 47 F.3d 691, 695 (5th Cir.), cert. denied, 515 U.S. 1168 (1995)(Upholding protective automobile search based on existence of hunting knife, ammunition, and occupant's general statement that she "did not know" the location of a pistol), with [Estep v. Dallas County](#), 310 F.3d 353, 358 (5th Cir. 2002)(Holding that camouflage gear, National Rifle Association sticker, key-chain mace, and an unusual tone of voice on the part of the passenger did not justify protective automobile search).

NOTE: There is often confusion on the part of students regarding the difference between "frisking" a vehicle during a [Terry](#) stop and "searching" the vehicle incident to the arrest of an occupant. At least one Federal circuit court of appeal has suggested that the "Supreme Court in [Long](#) defined the scope of a permissible protective search by borrowing the standard for vehicle searches incident to arrest established in [New York v. Belton](#), 453 U.S. 454 (1981)." [United States v. Arnold](#), 388 F.3d 237, 239 (7th Cir. 2004). Accordingly, the Seventh Circuit Court of Appeals has found that "the difference between a search under [Belton](#) and one under [Long](#) is simply the rationale for conducting it, not its physical boundaries." [Id.](#) at *7. Of course, "[a]lthough the general search area covered by [Belton](#) and [Long](#) is the same, the limited rationale for permitting a search under [Long](#) - safety concerns - constrains an officer to search only the locations that may contain a weapon and to which the motorist may have access." [Id.](#) (citation omitted). "Hence, assuming that an officer limits his search to those areas, the boundaries of the passenger compartment under

Belton apply equally to the scope of a search under Long.” Id.

- a) **The Passenger Compartment May Be “Frisked.”** In sum, if reasonable suspicion exists to believe that the driver or passenger in a vehicle is dangerous and may gain immediate control of a weapon, a law enforcement officer may “frisk” that person, as well as the entire passenger compartment of the vehicle. Id. at 1049; United States v. Cook, 277 F.3d 82, 85 (1st Cir. 2002) (Where law enforcement officer “has a reasonable basis to suspect that the subject of his inquiry may be armed, he also may frisk the suspect and undertake a limited search of the passenger compartment of any vehicle in which he is sitting”).
- b) **Containers Located Inside the Passenger Compartment May Be Frisked.** A “frisk” of a vehicle under Long may include any unlocked containers located in the passenger compartment. See, e.g., Holmes, 376 F.3d at 280-81 (Holding that Long allowed frisk of entire passenger compartment of vehicle where weapons could be found, including “containers’ like the center console and glove compartment”). Additionally, some courts have extended this rule to include locked containers, such as a locked glove compartment. See, e.g., United States v. Palmer, 360 F.3d 1243, (10th Cir. 2004)(Protective search of locked glove box permissible based on danger suspect may break away to obtain weapon); United States v. Holifield, 956 F.2d 665, 668-69 (7th Cir. 1992)(Frisk of locked glove box permissible in that “[o]nce the occupants reentered the vehicle, it would have taken only a few seconds for Holifield or one of the passengers to remove the keys from the ignition and unlock the glove compartment, thus giving them immediate access to the pistol”); United States v. Brown, 913 F.2d 570, 571-72 (8th Cir.), cert. denied, 498 U.S. 1016 (1990)(Upholding search of locked glove compartment where key was “lying on car’s

front seat”).

- c) **The Trunk May Not Be “Frisked.”** However, a law enforcement officer may not “frisk” the trunk of the vehicle. See [Arnold](#), 388 F.3d at 240 (“An officer armed solely with reasonable suspicion may not search the trunk of a vehicle when the motorist would not have been able to reach a weapon located there ...”); [United States v. Brown](#), 334 F.3d 1161, 1170 (D.C. Cir. 2003) (Noting that [Terry](#) frisks “are limited to areas immediately accessible to the suspect,” specifically, “the passenger compartment of the car”); [United States v. Wimbush](#), 337 F.3d 947, 950 (7th Cir.), cert. denied, ___ U.S. ___, 124 S. Ct. 848 (2003) (“Officers may conduct a protective search of a vehicle’s passenger compartment when they have a reasonable belief that the suspect poses a danger and that their safety may be threatened by the possible presence of weapons”).

NOTE: Many newer model vehicles allow a driver or passenger to access the trunk through the interior of the vehicle, primarily through a fold-down back seat or armrest. The only court to have addressed the situation to date has found that, in situations where “the trunk [is] generally accessible from the passenger compartment,” perhaps through a fold-down back seat, the seat may be lowered and the trunk may be “frisked” by a law enforcement officer. [Arnold](#), 388 F.3d at 240.

- 6) **Duration of Vehicle Stops.** As with a traditional investigative stop, an investigative detention that occurs in a vehicle “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” [Florida v. Royer](#), 460 U.S. 491, 500 (1983). “Ordinarily, when a citation or warning has been issued and all record checks have been completed and come back clean, the legitimate investigative purpose of the traffic stop is fulfilled, and the driver’s license and other documents should be returned.” [United States v. Simms](#), 385 F.3d 1347, 1353 (11th

Cir. 2004). See also [United States v. Fuse](#), 391 F.3d 924, 927 (8th Cir. 2004) (“Once the officer decides to let a routine traffic offender depart with a ticket, a warning or an all clear-a point in time determined, like other Fourth Amendment inquiries, by objective indicia of the officer’s intent-then the Fourth Amendment applies to limit any subsequent detention or search”). “If a traffic stop is unjustifiably prolonged past the point when a driver’s documents should have been returned, it may be found to have ended at the point when the documents should have been returned, and not when they were actually returned.” [Simms](#), 385 F.3d at 1353.

- 7) **Extending the Questioning Beyond That Related to the Initial Stop.** Generally, “questioning that prolongs the detention, yet cannot be justified by the purpose of such an investigatory stop, is unreasonable under the Fourth Amendment.” [United States v. Childs](#), 277 F.3d 947, 952 (7th Cir.), cert. denied, 537 U.S. 829 (2002). See also [Garrido-Santana](#), 360 F.3d at 574 (Noting “[t]he circuit courts generally agree that the Fourth Amendment requires that, absent some additional justification, any questioning during a valid traffic stop must not prolong the detention necessary to complete the initial purpose of that stop”). Nevertheless, “[l]engthening the detention for further questioning beyond that related to the initial stop is permissible in two circumstances.
 - a) **Extending the Stop Based Upon Reasonable Suspicion.** “First, the officer may detain the driver for questioning unrelated to the initial stop if he has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring.” [United States v. Hunnicutt](#), 135 F.3d 1345, 1349 (10th Cir. 1998). See also [United States v. Barragan](#), 379 F.3d 524, 529 (8th Cir. 2004) (“If the responses of the detainee and the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden his inquiry and satisfy those suspicions”); [United States v. Wood](#), 106 F.3d 942, 946 (10th Cir. 1997) (“The scope and duration of a traffic stop may be expanded beyond its initial purpose if, and only if, the police officer has ‘a

particularized and objective basis for suspecting the particular person stopped of criminal activity”); [Holt](#), 264 F.3d at 1221 (“Further delay is justified only if the officer has reasonable suspicion of illegal activity ...”); [United States v. Grant](#), 349 F.3d 192, 196 (5th Cir. 2003)(“Once an officer’s suspicions have been verified or dispelled, the detention must end unless there is additional articulable, reasonable suspicion”); [United States v. Townsend](#), 305 F.3d 537, 541 (6th Cir. 2002) (“To detain the motorist any longer than is reasonably necessary to issue the traffic citation ... the officer must have reasonable suspicion that the individual has engaged in more extensive criminal conduct”); [United States v. Gregory](#), 302 F.3d 805, 809 (8th Cir. 2002)(“If the responses of the detainee and the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden his inquiry and satisfy those suspicions”) (citation omitted); [United States v. Pruitt](#), 174 F.3d 1215, 1219 (11th Cir. 1999)(Noting “once an officer has briefly stopped a motor vehicle operator for the purpose of issuing a traffic violation (i.e., a ticket), the officer’s continuing detention of the vehicle’s occupants is authorized under the Fourth Amendment only if the officer can point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion”).

NOTE: In [Hunnicut](#), *supra*, the court listed a number of factors that “may contribute to the formation of an objectively reasonable suspicion of illegal activity” distinct from the original purpose of the stop. [Id.](#) at 1349. Among those factors that have justified further questioning are: (1) having no proof of ownership of the vehicle; (2) having no proof of authority to operate the vehicle; (3) inconsistent statements about destination; (4) driving with a suspended licence; and (5) a reluctance to stop. [Id.](#) Other courts have identified additional factors to lengthen a

traffic stop, such as incriminating statements made by the occupants during the stop, [Grant](#), 349 F.3d at 197, and lying about travel plans, [Townsend](#), 305 F.3d at 543.

- b) **Extending the Stop Based Upon the Consent of the Suspect.** “[F]urther questioning unrelated to the initial stop is [also] permissible if the initial detention has become a consensual encounter.” [Hunnicut](#), 135 F.3d at 1349. A vehicle stop “generally ends when the officer returns the driver’s license, registration, and insurance information.” [Manjarrez](#), 348 F.3d at 885. And, “[i]n several cases ... [courts] have acknowledged that a lawful traffic stop can devolve into a consensual encounter.” [United States v. Sanchez-Pena](#), 336 F.3d 431, 442 (5th Cir. 2003). For example, “[i]f the driver voluntarily consents to additional questioning, he is no longer seized for purposes of the Fourth Amendment because he is free to leave.” [United States v. Taverna](#), 348 F.3d 873, 878 (10th Cir. 2003). See, e.g., [United States v. Lattimore](#), 87 F.3d 647, 653 (4th Cir. 1996) (Where citation had been issued and license returned, “totality of the circumstances presented indicate[d] ... from this point forward the encounter was consensual”); [United States v. White](#), 81 F.3d 775, 778 (8th Cir.), cert. denied, 519 U.S. 1011 (1996) (Noting that, after the suspect’s “license and registration were returned and the warning was issued, the encounter became nothing more than a consensual encounter between a private citizen and a law enforcement officer”).
- k. **Pretextual Traffic Stops are Permissible.** “A pretextual stop occurs when the police use a legal justification to make a stop in order to search a person or his vehicle, or interrogate him, for an unrelated and more serious crime for which they do not have the reasonable suspicion necessary to support a stop.” [United States v. Morales-Zamora](#), 974 F.2d 149, 152 (10th Cir. 1992). In [Whren v. United States](#), 517 U.S. 806, 813 (1996), the Supreme Court upheld pretextual traffic stops, noting that the constitutionality of a

traffic stop does not depend “on the actual motivations of the individual officers involved.” Thus, “an officer may stop a vehicle for a traffic violation when his true motivation is to search for contraband, as long as the officer had probable cause to initially stop the vehicle.” [United States v. Hill](#), 195 F.3d 258, 264 (6th Cir. 1999), cert. denied, 528 U.S. 1176 (2000). See also [Garrido-Santana](#), 360 F.3d at 571 (Noting that, “as long as a police officer has probable cause to believe that a motorist committed a traffic violation, the resulting traffic stop is generally reasonable under the Fourth Amendment regardless of the officer’s subjective intent or state of mind in conducting the traffic stop”); [Draper v. Reynolds](#), 369 F.3d 1270, 1275 (11th Cir. 2004)(Noting that “ulterior motives will not invalidate police conduct based on probable cause to believe a violation of the law occurred”).

D. EPO #4: IDENTIFY WHEN LAW ENFORCEMENT OFFICERS MAY OR MAY NOT USE RACE TO JUSTIFY STOPS OR ARRESTS IN ACCORDANCE WITH DEPARTMENT OF JUSTICE GUIDELINES

1. **The Use of Racial Profiling By Law Enforcement Officers - DOJ Guidelines.** The use of race as a factor utilized by law enforcement officers in the performance of their duties gives rise to numerous Constitutional concerns. In light of these concerns, the Department of Justice (DOJ) published in June of 2003 a document entitled “[Guidance Regarding the Use of Race By Federal Law Enforcement Agencies](#).” On June 1, 2004, the Department of Homeland Security (DHS) explicitly adopted the DOJ policy on racial profiling. See [DHS Racial Profiling Policy](#). The following excerpts are taken directly from that document, and provide the standard that will be taught by the FLETC Legal Division. The [guidance](#) itself is attached to this lesson plan and contains clarifying information and additional examples that may be helpful in presenting this material.

NOTE: On June 1, 2004, the Secretary of the Department of Homeland Security issued a policy statement on racial profiling. This statement provides as follows: “Racial profiling concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement activities. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. DHS explicitly adopts the Department of Justice’s ‘Guidance Regarding the Use of Race By Federal Law Enforcement Agencies,’ issued in June 2003. It is the policy of the Department of Homeland Security to prohibit the

consideration of race or ethnicity in our daily law enforcement activities in all but the most exceptional circumstances, as defined in the DOJ Guidance. DHS personnel may use race or ethnicity only when a compelling governmental interest is present. Rather than relying on race or ethnicity, it is permissible and indeed advisable to consider an individual's connections to countries that are associated with significant terrorist activity. Of course, race- or ethnicity-based information that is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises, may be considered, as stated in the DOJ Guidance."

- a. **The Constitutional Framework.** "[T]he Constitution prohibits selective enforcement of the law based on considerations such as race." [Whren v. United States](#), 517 U.S. 806, 813 (1996). Thus, for example, the decision of federal prosecutors "whether to prosecute may not be based on 'an unjustifiable standard such as race, religion, or other arbitrary classification.'" [United States v. Armstrong](#), 517 U.S. 456, 464 (1996)[*quoting Oyler v. Boles*, 368 U.S. 448, 456 (1969)]. The same is true of Federal law enforcement officers. Federal courts repeatedly have held that any general policy of "utiliz[ing] impermissible racial classifications in determining whom to stop, detain, and search" would violate the Equal Protection Clause. [Chavez v. Illinois State Police](#), 251 F.3d 612, 635 (7th Cir. 2001). As the Sixth Circuit has explained, "[i]f law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred." [United States v. Avery](#), 137 F.3d 343, 355 (6th Cir. 1997). "A person cannot become the target of a police investigation solely on the basis of skin color. Such selective law enforcement is forbidden." *Id.* at 354. As the Supreme Court has held, this constitutional prohibition against selective enforcement of the law based on race "draw[s] on 'ordinary equal protection standards.'" [Armstrong](#), 517 U.S. at 465 [*quoting Wayte v. United States*, 470 U.S. 598, 608 (1985)]. Thus, impermissible selective enforcement based on race occurs when the challenged policy has "'a discriminatory effect and ... was motivated by a discriminatory purpose.'" *Id.* (*quoting Wayte*, 470 U.S. at 608). Put simply, "to the extent that race is used as a proxy" for criminality, "a racial stereotype requiring strict scrutiny is in operation." *Cf. Bush v. Vera*,

517 U.S. 952, 968 (1996)(plurality).

b. **Guidance for Federal Officials Engaged in Law Enforcement Activities**

- 1) **Routine or Spontaneous Activities in Domestic Law Enforcement.** In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.
- 2) **Law Enforcement Activities Related to Specific Investigations.** In conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. This standard applies even where the use of race or ethnicity might otherwise be lawful.
 - a) **Authorities May Never Rely on Generalized Stereotypes, But May Rely Only on Specific Race- or Ethnicity-Based Information.** Reliance upon generalized stereotypes is absolutely forbidden. Rather, use of race or ethnicity is permitted only when the officer is pursuing a specific lead concerning the identifying characteristics of persons involved in an *identified* criminal activity. The rationale underlying this concept carefully limits its reach. In order to qualify as a legitimate investigative lead, the following must be true:
 - * The information must be relevant to the locality or time frame of the criminal activity;
 - * The information must be trustworthy;

- * The information concerning identifying characteristics must be tied to the particular criminal incident, a particular criminal scheme, or a particular criminal organization.

This bar extends to the use of race-neutral pretexts as an excuse to target minorities. Federal law enforcement may not use such pretexts. This prohibition extends to the use of other, facially race-neutral factors as a proxy for overtly targeting persons of a certain race or ethnicity. This concern arises most frequently when aggressive law enforcement efforts are focused on "high crime areas." The issue is ultimately one of motivation and evidence; certain seemingly race-based efforts, if properly supported by reliable, empirical data, are in fact race-neutral.

- b) **The Information Must be Relevant to the Locality or Time Frame.** Any information concerning the race of persons who may be involved in specific criminal activities must be locally or temporally relevant.
- c) **The Information Must Be Trustworthy.** Where the information concerning potential criminal activity is unreliable or is too generalized and unspecific, use of racial descriptions is prohibited.
- d) **Race- or Ethnicity-Based Information Must Always be Specific to Particular Suspects or Incidents, or Ongoing Criminal Activities, Schemes, or Enterprises.** These standards contemplate the appropriate use of both "suspect-specific" and "incident-specific" information. As noted above, where a crime has occurred and authorities have eyewitness accounts including the race, ethnicity, or other distinguishing characteristics of the perpetrator, that information may be used. Federal authorities may also use reliable, locally relevant information linking persons of a certain race or ethnicity to a particular incident,

unlawful scheme, or ongoing criminal enterprise - even absent a description of any particular individual suspect. In certain cases, the circumstances surrounding an incident or ongoing criminal activity will point strongly to a perpetrator of a certain race, even though authorities lack an eyewitness account. It is critical, however, that there be reliable information that ties persons of a particular description to a specific criminal incident, ongoing criminal activity, or particular criminal organization. Otherwise, any use of race runs the risk of descending into reliance upon prohibited generalized stereotypes. Note that these standards allow the use of reliable identifying information about planned future crimes. Where federal authorities receive a credible tip from a reliable informant regarding a planned crime that has not yet occurred, authorities may use this information under the same restrictions applying to information obtained regarding a past incident. A prohibition on the use of reliable prospective information would severely hamper law enforcement efforts by essentially compelling authorities to wait for crimes to occur, instead of taking pro-active measures to prevent crimes from happening.

c. **Guidance for Federal Officials Engaged in Law Enforcement Activities Involving Threats to National Security or the Integrity of the Nation's Borders**

- 1) **Threats to National Security or Catastrophic Events.** In investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the Nation's borders, Federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States.
- 2) **Compelling Governmental Interest.** Since the terrorist attacks on September 11, 2001, the President has emphasized that federal law enforcement personnel must use every legitimate tool to prevent future attacks, protect our Nation's borders,

and deter those who would cause devastating harm to our Nation and its people through the use of biological or chemical weapons, other weapons of mass destruction, suicide hijackings, or any other means. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." [Haig v. Agee](#), 453 U.S. 280, 307 (1981)[*quoting* [Aptheker v. Secretary of State](#), 378 U.S. 500, 509 (1964)].

- 3) **Exceptional Circumstances Required.** The Constitution prohibits consideration of race or ethnicity in law enforcement decisions in all but the most exceptional instances. Given the incalculably high stakes involved in such investigations, however, Federal law enforcement officers who are protecting national security or preventing catastrophic events (as well as airport security screeners) may consider race, ethnicity, and other relevant factors to the extent permitted by our laws and the Constitution. Similarly, because enforcement of the laws protecting the Nation's borders may necessarily involve a consideration of a person's alienage in certain circumstances, the use of race or ethnicity in such circumstances is properly governed by existing statutory and constitutional standards. *See, e.g.,* [United States v. Brignoni-Ponce](#), 422 U.S. 873, 886-87 (1975). This policy will honor the rule of law and promote vigorous protection of our national security. As the Supreme Court has stated, all racial classifications by a governmental actor are subject to the "strictest judicial scrutiny." [Adarand Constructors, Inc. v. Peña](#), 515 U.S. 200, 224-25 (1995). The application of strict scrutiny is of necessity a fact-intensive process. *Id.* at 236. Thus, the legality of particular, race-sensitive actions taken by Federal law enforcement officials in the context of national security and border integrity will depend to a large extent on the circumstances at hand. In absolutely no event, however, may Federal officials assert a national security or border integrity rationale as a mere pretext for invidious discrimination. Indeed, the very purpose of the strict scrutiny test is to "smoke out" illegitimate use of race, [Adarand](#), 515 U.S. at 226 [*quoting* [Richmond v. J.A. Croson Co.](#), 488 U.S. 469, 493 (1989)], and law enforcement strategies not actually premised on *bona fide* national security or

border integrity interests therefore will not stand. In sum, constitutional provisions limiting government action on the basis of race are wide- ranging and provide substantial protections at every step of the investigative and judicial process. Accordingly ... when addressing matters of national security, border integrity, or the possible catastrophic loss of life, existing legal and constitutional standards are an appropriate guide for Federal law enforcement officers.

NOTE: As noted above, federal law enforcement officers who are protecting national security or preventing catastrophic events (as well as airport security screeners) may consider race, ethnicity, and other relevant factors “to the extent permitted by our laws and the Constitution.” Accordingly, the following section deals with the law (as opposed to the DOJ Guidance) on the use of race during law enforcement investigations regarding the protection of national security or prevention of catastrophic events.

2. **The Use of Racial Profiling By Law Enforcement Officers - Constitutional and Federal Law.** The use of race as a factor utilized by law enforcement officers in the performance of their duties gives rise to numerous Constitutional concerns. The following discussion concerns the use of race in what is referred to as the “pre-contact” stage. The “pre-contact” stage occurs “prior to the consensual encounter, when officers decide to ‘target’ someone for surveillance.” [Avery](#), 137 F.3d at 353.

- a. **Race as the Sole Factor During Pre-Contact Stage.** In sum, “a person cannot become the target of a police investigation solely on the basis of skin color.” [Id.](#) at 354. “Although Fourth Amendment principles regarding unreasonable seizures do not apply to consensual encounters, an officer does not have unfettered discretion to conduct an investigatory interview with a citizen. The Equal Protection Clause of the Fourteenth Amendment provides citizens a degree of protection independent of the Fourth Amendment protection against unreasonable searches and seizures. This protection becomes relevant even before a seizure occurs.” [Id.](#) at 352. So, for example, a “factually supported record of the selection for interview because of race, a general practice or pattern that primarily targeted minorities for consensual interviews, or a racial component

in the drug courier profile would have given rise to due process and equal protection constitutional implications cognizable by" a federal court. [United States v. Taylor](#), 956 F.2d 572, 578 (6th Cir.), cert. denied, 506 U.S. 952 (1992).

- b. **Race as One Factor Among Others During Pre-Contact Stage.** "In some instances, officers may decide to interview a suspect for many reasons, some of which are legitimate and some of which may be based on race. In such instances ... the use of race in pre-contact stage does not give rise to any constitutional protections." [United States v. Travis](#), 62 F.3d 170, 174 (6th Cir. 1995), cert. denied, 516 U.S. 1060 (1996). Thus, while race may not be used as the sole factor to target an individual during the pre-contact stage, "if at the point an officer decides to *interview/encounter* a suspect he has gathered many reasons for that interview - one being race - the focus of the court is the consensual encounter, and the use of race as one factor in the pre-contact stage may not violate equal protection principles." [Avery](#), 137 F.3d at 353 (emphasis in original). Further, "common sense dictates that, when determining whom to approach as a suspect of criminal wrongdoing, a police officer may legitimately consider race as a factor if descriptions of the perpetrator known to the officer include race." [United States v. Waldon](#), 206 F.3d 597, 604 (6th Cir.), cert. denied, 531 U.S. 881 (2000).

E. EPO #5: IDENTIFY WHEN PROBABLE CAUSE EXISTS TO THE EXTENT THAT AN ARREST OR SEARCH MAY BE JUSTIFIED

1. **General Rule – Probable Cause is the Standard for the Issuance of Warrants and the Arrests of Individuals.**
- a. **Issuance of Warrants.** The Fourth Amendment provides that "no Warrant shall issue but upon probable cause" Accordingly, "in cases in which the Fourth Amendment requires that a warrant to search be obtained, 'probable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness." [Camara v. Municipal Court](#), 387 U.S. 523, 534 (1967). See also [Franks v. Delaware](#), 438 U.S. 154, 164 (1978) ("The bulwark of Fourth Amendment protection, of course, is the Warrant Clause, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search").
- b. **Arrests.** Probable cause is also required before an individual may be arrested for a criminal violation. See, e.g.,

[Michigan v. Summers](#), 452 U.S. 692, 700 (1981)(Noting “every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause”); [Dunaway v. New York](#), 442 U.S. 200, 208 (1979)(“The standard of probable cause thus represented the ... minimum justification necessary to make the kind of intrusion involved in an arrest ‘reasonable’ under the Fourth Amendment”); [Gerstein v. Pugh](#), 420 U.S. 103, 111 (1975)(Noting “the standard for arrest is probable cause”); [United States v. Edwards](#), 242 F.3d 928, 933-34 (10th Cir. 2001) (“To be lawful, a warrantless arrest must be supported by probable cause to arrest”)(quotation omitted); [United States v. Cruz-Jimenez](#), 894 F.2d 1, 4 (1st Cir. 1990) (“ All arrests ... are presumptively unreasonable unless supported by probable cause”).

2. **“Probable Cause” - Defined.** “Articulating precisely what ‘probable cause’ mean[s] is not possible.” [Ornelas v. United States](#), 517 U.S. 690, 695 (1996). Instead, “probable cause is a fluid concept - turning on the assessment of probabilities in particular factual contexts - not readily, or even usefully, reduced to a neat set of legal rules.” [Gates](#), 462 U.S. at 232. See also [Maryland v. Pringle](#), 540 U.S. 366, (2003)(“The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances”); [Texas v. Brown](#), 460 U.S. 730, 742 (1983)(Noting that “probable cause is a flexible, common-sense standard”). Nonetheless, the Supreme Court has noted that, “[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt,” and that the belief of guilt must be particularized with respect to the person to be searched or seized.” [Pringle](#), ___ U.S. at ___, 124 S. Ct. at 800. Accordingly, some basic definitions for probable cause to “arrest” or “search” have been formulated.

- a. **Probable Cause to Search.** The Supreme Court has defined probable cause to search “as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” [Ornelas](#), 517 U.S. at 696 [citing [Brinegar v. United States](#), 338 U.S. 160 (1949)].
- b. **Probable Cause to Arrest.** “The standard for arrest is probable cause, defined in terms of facts and circumstances ‘sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.’” [Gerstein](#), 420 U.S. at 111-112 [quoting [Beck v. Ohio](#), 379 U.S. 89, 91 (1964)]. See also [United States v. Hartje](#), 251

F.3d 771, 775 (8th Cir. 2001), cert. denied, 534 U.S. 1116 (2002)(“Probable cause to conduct a warrantless arrest exists when at the moment of arrest police have knowledge of facts and circumstances grounded in reasonably trustworthy information sufficient to warrant a belief by a prudent person that an offense has been or is being committed by the person to be arrested”); [United States v. Buckner](#), 179 F.3d 834, 837 (9th Cir. 1999)(“Probable cause exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [the defendant] had committed a crime”)(citation omitted).

3. **Probable Cause Must Be Based on Facts, Not Mere Conclusions.** “Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.” [Gates](#), 462 U.S. at 239. See, e.g., [United States v. Satterwhite](#), 980 F.2d 317, 321 (5th Cir. 1992)(“Bare bones’ affidavits contain wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause”); [United States v. Wilhelm](#), 80 F.3d 116, 119 (4th Cir. 1996)(same).
4. **The Test for Probable Cause is “Totality of the Circumstances.”** “Whether probable cause exists depends upon the totality of the circumstances, but it requires a showing of facts ‘sufficient to create a fair probability that evidence of a crime will be found in the place to be searched.’” [United States v. Gabrio](#), 295 F.3d 880, 885 (8th Cir.), cert. denied, 537 U.S. 962 (2002)(*citing* [Gates](#), 462 U.S. at 238). See also [United States v. Greene](#), 250 F.3d 471, 479 (6th Cir. 2001)(Noting “review of an affidavit and search warrant should rely on a ‘totality of the circumstances’ determination, rather than a line-by-line scrutiny”); [United States v. Montgomery](#), 377 F.3d 582, 590-92 (6th Cir. 2004)(Probable cause to arrest passenger in vehicle for possession with intent to distribute where officer observed a marijuana stem on the driver’s floorboard, a digital scale covered with green leafy material, and white powder was found hidden under the backseat armrest; court noted that, in a drug dealing enterprise, “guilty parties would not likely admit an innocent person into such a criminal enterprise for fear of that person furnishing incriminating evidence against them”); [United States v. Velazquez-Rivera](#), 366 F.3d 661, 664 (8th Cir. 2004)(Probable cause existed under totality of the circumstances based upon (a) the corroborated tip of a confidential informant; (b) suspects’ attempts to elude police by evasive driving; (c) one suspect’s discarding of clothing in an attempt to disguise himself; (d) one officer’s personal knowledge that drugs were traded at the

target address; (e) suspects hurried into the target address while police were yelling for them to stop; (f) one suspect removed and threw away the memory chip to his cell phone; and (g) suspect threw keys to one apartment under the door of another while the police were forcing their way into the building).

NOTE: Students should be reminded that, in any probable cause determination, “[t]he focus is not on certitude, but, rather, on the likelihood of criminal activity.” [Acosta v. Ames Dep’t Stores, Inc.](#), 386 F.3d 5, 10 (1st Cir. 2004). “The probable cause standard does not require the officers’ conclusion to be ironclad, or even highly probable. Their conclusion that probable cause exists need only be reasonable.” [United States v. Winchenbach](#), 197 F.3d 548, 555-556 (1st Cir. 1999). See also [United States v. Trujillo](#), 376 F.3d 593, 603 (6th Cir. 2004)(Noting that “only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause”)(citation omitted).

5. **There Are Various Methods of Establishing Probable Cause.** A law enforcement officer may establish probable cause in any number of different ways. See, e.g., [United States v. Lattner](#), 385 F.3d 947, 952 (6th Cir. 2004)(Search warrant affidavit “contain[ed] several different kinds of information in the form of anonymous assertions, direct observations, corroboration of assertions, and valid inferences from circumstances,” which, taken together, established probable cause). This includes the following:
- a. **Direct Observations by Law Enforcement Officers May Establish Probable Cause.** Perhaps the easiest way to establish probable cause is through a law enforcement officer’s direct observations. “Obviously, direct observation of [a criminal] offense during its commission ... constitutes probable cause.” [United States v. Marshall](#), 463 F.2d 1211, 1212 (5th Cir. 1972)[citing [Draper v. United States](#), 358 U.S. 307 (1959)].
 - b. **Probable Cause May Be Established Through Smell.** A law enforcement officer may use his sense of smell to establish probable cause, such as when he smells the odor of marijuana emanating from a vehicle or a person. See, e.g., [Gerard](#), 362 F.3d at 489 (“The Supreme Court recognizes that the odor of an illegal drug can be highly probative in establishing probable cause for a search. Circuits have held that the odor of marijuana, standing alone, is sufficient to support probable cause”); [United States v. Humphries](#), 372 F.3d 653, 658 (4th Cir. 2004)(Noting “the odor of marijuana alone can provide probable cause to

believe that marijuana is present in a particular place”); [United States v. Zabalza](#), 346 F.3d 1255, 1259 (10th Cir. 2003)(“This court has long recognized that marijuana has a distinct smell and that the odor of marijuana alone can satisfy the probable cause requirement to search a vehicle or baggage”)(citation omitted); [United States v. Taylor](#), 162 F.3d 12, 21 (1st Cir. 1998)(“When looking in, Officer Auger and Sergeant Kennedy immediately detected a ‘strong odor’ of marijuana. That observation provided probable cause for a search of the car for any narcotics”).

- c. **Observations Made By “Fellow” Law Enforcement Officers May Establish Probable Cause.** “Under the ‘fellow-officer’ rule, law enforcement officials cooperating in an investigation are entitled to rely upon each other’s knowledge of facts when forming the conclusion that a suspect has committed or is committing a crime.” [United States v. Meade](#), 110 F.3d 190, 193 (1st Cir. 1997). See also [United States v. Ventresca](#), 380 U.S. 102, 111 (1965) (“Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number”); [Karr v. Smith](#), 774 F.2d 1029, 1031 (10th Cir. 1985)(“Under the ‘fellow officer’ rule, ‘probable cause is to be determined by the courts on the basis of the collective information of the police involved in the arrest, rather than exclusively on the extent of the knowledge of the particular officer who may actually make the arrest’”). Also referred to as “collective knowledge,” “the fellow officer rule underlies the well-worn maxim that ‘the collective knowledge and information of all the officers involved establishes probable cause for the arrest.’” [Meade](#), 110 F.3d at 194.
- d. **A Law Enforcement Officer’s Training and Experience May Be Used to Establish Probable Cause.** In considering whether probable cause has been established, “the court issuing the warrant is entitled to rely on the training and experience of police officers.” [United States v. Gil](#), 58 F.3d 1414, 1418 (9th Cir.), cert. denied, 516 U.S. 969 (1995). See also [United States v. Soule](#), 908 F.2d 1032, 1040 (1st Cir. 1990)(“The affidavit was prepared by a police officer whose experience and expertise provided the clerk magistrate with further reason to credit the representation in the warrant application”). However, in so doing, most courts require that there must be sufficient additional facts provided to support a determination of probable cause. See, e.g., [United States v. Schultz](#), 14 F.3d 1093, 1097 (6th Cir. 1994) (Holding that although the training and experience of a law

enforcement officer may be considered in the determination of probable cause, "it cannot substitute for the lack of evidentiary nexus"); [United States v. Rios](#), 881 F. Supp. 772, 775 (D. Conn. 1995)(Holding that an affidavit containing a law enforcement officer's expert opinion but no facts to support an inference that evidence of the defendant's criminal activity would be found at his home did not provide a substantial basis for a finding of probable cause); [United States v. Gomez](#), 652 F. Supp. 461, 463 (E.D.N.Y. 1987) (Holding that although the issuing judge is entitled to "consider and credit" the expert opinion of a law enforcement officer, "it does not alone provide probable cause to search"). *But see, e.g.,* [United States v. Thomas](#), 989 F.2d 1252, 1254 (D.C. Cir. 1993)(Finding probable cause to search the defendant's home based on his involvement in drug-dealing activities and law enforcement officer's opinion that drug dealers frequently keep evidence of their activities in their houses).

- e. **Information From a Drug-Sniffing Canine May Establish Probable Cause.** Probable cause may also be established through the use of a non-human source, such as a trained drug-sniffing dog. *See, e.g.,* [United States v. Jacob](#), 377 F.3d 573, 580 n.5 (6th Cir. 2004)("Once the drug detection dog alerted to the presence of drugs shortly after the stop, the investigators had probable cause to search the vehicle"); [Resendiz v. Miller](#), 203 F.3d 902, 903 (5th Cir. 2000)("A drug-sniffing canine alert is sufficient, standing alone, to support probable cause for a search"); [United States v. Scarborough](#), 128 F.3d 1373, 1378 (10th Cir. 1997)("It is undisputed that a drug sniffing dog's detection of contraband in itself establishes probable cause for a search warrant").
- 1) **The Dog Must Be Properly Trained.** Of course, the dog must be properly trained and suitably reliable for probable cause to be established based on the dog-sniff alone. *See* [United States v. Hill](#), 195 F.3d 258, 273 (6th Cir. 1999), *cert. denied*, 528 U.S. 1176 (2000)("An alert by a properly-trained and reliable dog establishes probable cause sufficient to justify a warrantless search of a stopped vehicle; [United States v. Munroe](#), 143 F.3d 1113, 1116 (8th Cir. 1998)("When the canine alerted, the officers then had probable cause to search the vehicle and did not need a search warrant under the automobile exception").
 - 2) **The Failure of a Dog to Alert Does Not**

Automatically Mean Probable Cause is Lacking.

Additionally, even if the dog does not alert, this does not automatically mean that probable cause is lacking. “Drug-detecting dogs have not supplanted the neutral and detached magistrate as the arbiter of probable cause.” [United States v. Glover](#), 104 F.3d 1570, 1577 (10th Cir. 1997). As noted by one court: “Some contraband simply is not detectable by the drug dogs because only a relatively small quantity of narcotic is contained in the package, the drug is double packaged with plastic, or an odor masking substance such as coffee is used.” [Id.](#) at 1577 n.3.

NOTE: The following sections discuss establishing probable cause through hearsay information of various individuals, such as victims, witnesses, and informants. It goes without saying that “hearsay evidence may form the basis for a probable cause determination.” [United States v. Mathis](#), 357 F.3d 1200, 1204 (10th Cir. 2004). See also [Jones v. United States](#), 362 U.S. 257, 269 (1960)(“The question here is whether an affidavit which sets out personal observations relating to the existence of cause to search is to be deemed insufficient by virtue of the fact that it sets out not the affiant's observations but those of another. An affidavit is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented”) (overruled on other grounds); [United States v. Helton](#), 314 F.3d 812, 819 (6th Cir. 2003)(“In evaluating whether probable cause exists for issuing a search warrant, a judicial officer may rely on hearsay evidence”); [United States v. Jordan](#), 999 F.2d 11, 13-14 (1st Cir. 1993)(“Hearsay statements ... often are the stuff of search warrant affidavits”); [United States v. Mitchell](#), 31 F.3d 271, 275 (5th Cir.), cert. denied, 513 U.S. 977 (1994)(“An affidavit may ... employ hearsay as long as it provides a ‘substantial basis for crediting the hearsay’”); Additionally, “multiple layers of hearsay may support a finding of probable cause for a search warrant.” [Mathis](#), 357 F.3d at 1204. In such a situation, each layer of hearsay must meet the test of reliability (veracity and basis of knowledge) discussed below. See, e.g., [United](#)

[States v. Wylie](#), 705 F.2d 1388, 1390 (4th Cir. 1983)(“In affidavits containing two layers of hearsay, the same two-prong test [veracity and basis of knowledge] must be applied to each level of hearsay. However, double hearsay may satisfy the test”).

- f. **Information From Victims/Witnesses May Establish Probable Cause.** Probable cause may also be established based upon information provided by victims and/or witnesses. “When police officers obtain information from an eyewitness or victim establishing the elements of a crime, the information is almost always sufficient to provide probable cause for an arrest in the absence of evidence that the information, or the person providing it, is not credible.” [Pasiewicz v. Lake County Forest Pres. Dist.](#), 270 F.3d 520, 524 (7th Cir. 2001). See also [Forest v. Pawtucket Police Department](#), 377 F.3d 52, 57 (1st Cir. 2004)(“[P]olice officers can justifiably rely upon the credible complaint by a victim to support a finding of probable cause”); [United States v. Phillips](#), 727 F.2d 392, 397 (5th Cir. 1984)(“When an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case”). “The rationale for the victim or bystander exception is that the statements of such eyewitnesses will presumably be based on their own observations and thus are not likely to reflect ‘idle rumor or irresponsible conjecture.’” [Phillips](#), 727 at 397. “Whereas other informants, who often are ‘intimately involved with the persons informed upon and with the illegal conduct at hand,’ may have personal reasons for giving shaded or otherwise inaccurate information to law enforcement officials, such is not true of bystanders or eyewitness-victims who have no connection with the accused.” [United States v. Flynn](#), 664 F.2d 1296, 1302-03 (5th Cir.), cert. denied, 456 U.S. 930 (1982). See also [United States v. Schaefer](#), 87 F.3d 562, 566 (1st Cir. 1996)(Court noted information obtained from neighbors “enjoy[ed] special stature since information provided by ordinary citizens has particular value in the probable cause equation”). Finally, “[v]ictims’ complaints are a prime source of investigatory information for police officers. In the absence of circumstances that would raise a reasonably prudent officer’s antennae, there is no requirement that the officer corroborate every aspect of every complaint with extrinsic information.” [Acosta](#), 386 F.3d

at 10.

- g. **Information From Confidential Informants May Be Used to Establish Probable Cause.** “The use of confidential informants in criminal investigations is commonplace.” [Schaefer](#), 87 F.3d at 566. In fact, the use of confidential informants “has been characterized as a necessary part of police work.” *Id.* However, “[w]hen confronted with hearsay information from a confidential informant or an anonymous tipster, a court must consider the veracity, reliability, and the basis of knowledge for that information as part of the totality of the circumstances for evaluating the impact of that information.” [United States v. Helton](#), 314 F.3d 812, 819 (6th Cir. 2003). See also [United States v. Oliva](#), 385 F.3d 1111, 1114 (7th Cir. 2004) (“An informant’s tip, if reliable, is considered trustworthy information”); [United States v. Lucca](#), 377 F.3d 927, 933 (8th Cir. 2004) (“When a confidential informant provides information in support of a search warrant, the issuing magistrate considers the informant’s reliability and the basis of knowledge”).

- 1) **The Two-Prong Aguilar Test for Confidential Informants.** In [Aguilar v. Texas](#), 378 U.S. 108 (1964), the Supreme Court outlined a two-prong test for determining whether information provided by a confidential informant established probable cause. The two prongs of the “[Aguilar](#) Test” revolve around (1) the credibility of the informant and (2) the informant’s basis of knowledge. Of course, “[t]he totality of the circumstances analysis ... does not mandate that both factors be present before a warrant may issue.” [Lucca](#), 377 F.3d at 933. “Instead, a strong showing of one may compensate for a deficiency in the other.” *Id.*

- a) **Credibility of Source.** Under this prong of the [Aguilar](#) test, “facts must be brought before the judicial officer so that he may determine either the inherent credibility of the informant or the reliability of his information on this particular occasion.” 2 W. LaFare, *Search and Seizure* § 3.3(a), p. 91 (3d ed. 1996). Stated differently, a court must “consider the informant’s information - in amount and in degree of reliability - and the degree of corroboration of that information by the officers.” [United States v. Navarro](#), 90 F.3d 1245, 1253 (7th Cir. 1996). Establishing the credibility of a confidential

informant can be done in a variety of ways.

- (1) **Proven Track Record.** An informant's tip can be sufficient to establish probable cause if the informant "has a track record of supplying reliable information." [United States v. Williams](#), 10 F.3d 590, 593 (9th Cir. 1993). See, e.g., [United States v. Harris](#), 403 U.S. 573, 583 (1971) ("We cannot conclude that a policeman's knowledge of a suspect's reputation ... is not a "practical consideration of everyday life" upon which an officer (or a magistrate) may properly rely in assessing the reliability of an informant's tip"); [United States v. Hodge](#), 354 F.3d 305, 311 (4th Cir. 2004) (Noting "a proven, reliable informant is entitled to far more credence than an unknown, anonymous tipster"); [United States v. Warren](#), 42 F.3d 647, 652 (D.C. Cir. 1994) ("One of the ways in which reliability of a tip can be substantiated in one respect is by showing that the informant has proven credible in other instances"); [United States v. Bynum](#), 293 F.3d 192, 203 (4th Cir. 2002) (Noting "courts have uniformly held that an informant's veracity is adequately established when the affiant asserts that the informant has supplied information leading to arrests and convictions")... Reference to specific facts in the affidavit can enhance an informant's credibility based on his prior track record.
- (2) **Declarations Against Penal Interest.** "The fact that an informant's statements are against his or her penal interest adds credibility to the informant's report." [United States v. Schaefer](#), 87 F.3d 562, 566 (1st Cir. 1996). As noted by the Supreme Court: "People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions

against proprietary interests, carry their own indicia of credibility - sufficient at least to support a finding of probable cause to search." [Harris](#), 403 U.S. at 583. See also [United States v. Ketzeback](#), 358 F.3d 987, 991 (8th Cir. 2004)(Reliability of CI exhibited where he "implicated himself in drug activity while in custody on entirely unrelated and relatively minor charges"); [United States v. Soriano](#), 346 F.3d 963, 972 (9th Cir. 2003) ("When considering reliability, the courts may employ a number of methods to determine if an informant's information is reliable. It may be demonstrated ... by admission against penal interest, for example") (internal quotation marks and citation omitted); [United States v. Fields](#), 72 F.3d 1200, 1215 (5th Cir.), cert. denied, 519 U.S. 807 (1996)(Credibility of informant established where, *inter alia*, they "also implicated themselves in illegal drug activities and made admissions against penal interest"); [Turner v. Caspari](#), 38 F.3d 388, 393 (8th Cir. 1994)(same); [Gabrio](#), 295 F.3d at 885 (Reliability established where "affidavit stated that the informant had provided reliable information on at least two prior occasions and had returned stolen property to law enforcement officers").

- (3) **Corroboration of the Informant's Information.** "When there is sufficient independent corroboration of an informant's information, there is no need to establish the veracity of the informant." [United States v. Danhauer](#), 229 F.3d 1002, 1006 (10th Cir. 2000). See also [Ganser](#), 315 F.3d at 843 ("If an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity")(internal

quotations omitted); [United States v. Nielsen](#), 371 F.3d 574, 580 (9th Cir. 2004)(Informant information found reliable where officer “corroborated certain factual details contained in the informants’ statements”); [United States v. Formaro](#), 152 F.3d 768, 770 (8th Cir. 1998) (“Corroboration of the [confidential informant’s] information by independent investigation is an important factor in the calculus of probable cause”); [United States v. Khounsavanh](#), 113 F.3d 279, 284 (1st Cir. 1997)(Court noted that among the factors to be considered in determining whether probable cause existed included “whether some or all the informant’s factual statements were corroborated wherever reasonable and practicable (e.g., through police surveillance”); [U.S. v. Williams](#), 477 F.3d 554 (8th Cir. 2007) (holding that probable cause was not defeated by failure to mention informant’s criminal history if information is at least partially corroborated or informant’s reliability otherwise established, such as with a proven track record).

- (4) **Direct Observations by the Informant.** “First-hand observations by a CI support a finding of reliability.” [United States v. Johnson](#), 289 F.3d 1034, 1039 (7th Cir. 2002). See, e.g., [Gates](#), 462 U.S. at 234 (“Even if we entertain some doubt as to an informant’s motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed **first hand**, entitles his tip to greater weight than might otherwise be the case”)(emphasis added); [Harris](#), 403 U.S. at 581 (Reliability of informant found because, *inter alia*, affidavits “purport to relate the personal observations of the informant”); [Nielsen](#), 371 F.3d at 580 (Informant information considered more reliable

where all informants “stated they had firsthand knowledge” of defendant’s drug trafficking “based on their earlier methamphetamine buys”); [United States v. Taylor](#), 985 F.2d 3, 6 (1st Cir.), cert. denied, 508 U.S. 944 (1993)(“The affidavit may disclose an adequate basis for evaluating the informant’s veracity through the very specificity and detail with which it relates the informant’s first-hand description of the place to be searched or the items to be seized”); [United States v. Cochran](#), 896 F.2d 635, 641 (1st Cir.), cert. denied, 496 U.S. 929 (1990)(“An important indicia of reliability is the fact that the informant’s knowledge was based upon personal observation”).

- (5) **Informant’s Presence Before the Magistrate Judge.** “When a [confidential informant] accompanies the officer and is available to give testimony before the judge issuing the warrant, his presence adds to the reliability of the information used to obtain the warrant, because it provides the judge with an opportunity to assess the informant’s credibility and allay any concerns he might have had about the veracity of the informant’s statements.” [Johnson](#), 289 F.3d at 1040. *See also* [United States v. Lloyd](#), 71 F.3d 1256, 1262 (7th Cir. 1995)(same), cert. denied, 517 U.S. 1250 (1996).
- (6) **Face-to-Face Meeting Between Officer and Informant.** Whether the information was provided by the informant in a face-to-face encounter with the affiant can be considered in determining the informant’s reliability. *See, e.g.,* [Gabrio](#), 295 F.3d at 885. (Noting that, among the factors to consider in determining informant’s reliability was the affiant’s opportunity “to assess the informant’s credibility because he gave his tip in person”);

[United States v. Robertson](#), 39 F.3d 891, 893 (8th Cir. 1994), cert. denied, 514 U.S. 1090 (1995)(Reliability of informant established, in part, because affiant was “allowed ... to question the informant face-to-face and to determine whether he or she appeared to be a credible person... That first-hand observation gives greater weight to [affiant’s] decision to rely on the informant’s information”).

- (7) **Consistency Between Independent Informants.** “Courts often have held that consistency between the reports of two independent informants helps to validate both accounts.” [Schaefer](#), 87 F.3d at 566. *See also* [Nielsen](#), 371 F.3d at 580 (Court noted “the veracity of [the informants] is buttressed by the similarity of their accounts”); [United States v. Oropesa](#), 316 F.3d 762, 768 (8th Cir. 2003)(“Not only had Brooks proved to be a reliable informant, as evidenced by the arrest of Brooks’ second drug source just two weeks earlier, two other informants corroborated Brooks’ information that Oropesa sold drugs out of his home and automotive shop”); ([United States v. Fields](#), 72 F.3d 1200, 1214 (5th Cir.), cert. denied, 519 U.S. 807 (1996)(“Each informant gave information to the police independent of the other informants, and each one’s information corroborate the others”); [United States v. Thao Dinh Le](#), 173 F.3d 1258, 1266 (10th Cir. 1998)(Probable cause found where, *inter alia*, “the affidavit contained information provided by two different informants whose stories were remarkably consistent”); [United States v. Pritchard](#), 745 F.2d 1112, 1121 (7th Cir. 1984)(“By telling consistent yet independent stories, the informants provide ‘cross-corroboration,’ and enhance the reliability of the application.

as a whole").

- (8) **The Degree of Detail Given By the Informant.** The degree of detail given by an informant may also be considered in determining the veracity of an informant's tip. See, e.g., [United States v. Koerth](#), 312 F.3d 862, 866 (7th Cir. 2002), cert. denied, 538 U.S. 1020 (2003); [United States v. Padro](#), 52 F.3d 120, 123 (6th Cir. 1995) ("The richness of detail provided by an informant increases the reliability of the information").
 - (9) **Any Personal Interest of the Informant.** An informant's "personal interest can create a 'strong motive to supply accurate information'" to law enforcement officers. [United States v. DeQuasie](#), 373 F.3d 509, 523 (4th Cir. 2004). See also [United States v. Perez](#), 393 F.3d 457, 462 (4th Cir. 2004)(Noting that informant's statement "reflected his personal concern for his girlfriend's well-being, which we have found to be another indication of an informant's credibility").
 - (10) **9-1-1 calls.** If an anonymous 9-1-1 caller's information establishes a reasonable belief that someone is in imminent peril, there is no requirement to establish the caller's identity or reliability before acting on the information. [U.S. v. Elder](#), 466 F.3d 1090 (7th Cir. 2006).
- b) **Basis of Knowledge.** In addition to the "credibility of source," "under [Aguilar](#), the 'basis of knowledge' prong also needed to be satisfied." 2 W. LaFare, *Search and Seizure* § 3.3(a), p. 92 (3d ed. 1996). "It is critical to a showing of probable cause that the affidavit state facts sufficient to justify a conclusion that evidence or contraband will probably be found at the premises to be searched." [United States v. Hove](#), 848 F.2d 137, 140 (9th Cir. 1988). "In determining whether an affidavit based upon

an informant's tips provides a substantial basis for a finding of probable cause, 'an 'explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles [the informant's] tip to greater weight than might otherwise be the case.'" [United States v. Sonagere](#), 30 F.3d 51, 53 (6th Cir. 1994)(quoting [Gates](#), 462 U.S. at 234). See also [Johnson](#), 289 F.3d at 1039 (Where the confidential informant had direct observation of the defendant's criminal activity, this "established the [informant's] basis of knowledge"). In essence, the "basis of knowledge" prong requires the government to provide sufficient information to show the informant knows who is involved in the criminal activity, what criminal activity is taking place, where and when the criminal activity is taking place, and how the informant became aware of this information. See, e.g., [United States v. Bishop](#), 264 F.3d 919, 925 (9th Cir. 2001) ("When considering the basis of knowledge, courts look for how the informant came by his or her knowledge")(internal quotation marks and citation omitted).

- 2) **[Aguilar and Gates](#)**. In [Gates](#), the two-part [Aguilar](#) test (outlined above) was rejected by the Supreme Court as "hypertechnical and divorced from 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" [Massachusetts v. Upton](#), 466 U.S. 727, 732 (1984)(citation omitted). Instead, the Court adopted a "totality of the circumstances" approach to determining probable cause. "The phrase means simply that the court considers all data relevant to the probability of a crime being committed, without having to satisfy the two independent requirements (or proverbial "prongs") of the [Aguilar](#) test" [United States v. Riley](#), 351 F.3d 1265, 1267 (D.C. Cir. 2003). However, while "[Gates](#) replaced the two-pronged framework of [Aguilar](#) ... with the totality of the circumstances test," [Khounsavanh](#), 113 F.3d at 283, "the [Gates](#) Court agreed that the [Aguilar](#) ... factors, including 'an informant's 'veracity,' 'reliability' and 'basis of knowledge' are all highly relevant in determining the value of his report." [Id.](#) at 284

(citation omitted).

6. **Duty to Investigate Once Probable Cause is Established.**
“Probable cause determinations are, virtually by definition, preliminary and tentative.” [Acosta](#), 386 F.3d at 11... For this reason, “the Supreme Court has flatly rejected the idea that the police have a standing obligation to investigate potential defenses before finding probable cause.” *Id.* Thus, as a general rule, “[o]nce a police officer discovers sufficient facts to establish probable cause, she has no constitutional obligation to conduct any further investigation in the hope of discovering exculpatory evidence.” [Hodgkins v. Peterson](#), 355 F.3d 1048, 1061 (7th Cir. 2004). See also [Brodnicki v. City of Omaha](#), 75 F.3d 1261, 1264 (8th Cir.), cert. denied, 519 U.S. 867 (1996)(“The officers were not required to conduct a mini-trial before arresting Brodnicki”). Thus, while a police officer may not ignore conclusively established evidence of the existence of an affirmative defense, [Estate of Dietrich v. Burrows](#), 167 F.3d 1007, 1012 (6th Cir. 1999), the officer has no duty to investigate the validity of any defense. [Baker v. McCollan](#), 443 U.S. 137, 145-46 (1979).

F. EPO #6: IDENTIFY THE ORIGIN, PURPOSE AND SCOPE OF THE EXCLUSIONARY RULE

1. **General Rule – Evidence Obtained in Violation of the Fourth Amendment is Generally Inadmissible at Trial.** The Supreme Court has long recognized that “the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands.” [Arizona v. Evans](#), 514 U.S. 1, 10 (1995). Instead, the Court has developed the “exclusionary rule,” which “operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule’s general deterrent effect.” *Id.* See also [United States v. Leon](#), 468 U.S. 897, 906 (1984); [United States v. Calandra](#), 414 U.S. 338, 354 (1974).
2. **The Purpose of the Rule is to Deter Police Misconduct.** Historically, “the exclusionary rule [was] designed to deter police misconduct....” [Leon](#), 468 U.S. at 916. See also [Elkins v. United States](#), 364 U.S. 206, 217 (1960)(“Its purpose is to deter - to compel respect for the constitutional guaranty in the only effectively available way - by removing the incentive to disregard it”); [United States v. Johnson](#), 364 F.3d 1185, 1190 (10th Cir. 2004)(“The purpose of the Fourth Amendment and the associated exclusionary rule is not to grant certain guilty defendants a windfall by letting them go free - though it sometimes does do that. The objective is rather to protect *all* citizens, particularly the innocent, by deterring overzealous police behavior”)(emphasis in original); [United States](#)

[v. Merritt](#), 361 F.3d 1005, 1009 (7th Cir. 2004) (“The exclusionary rule has such a deterrent effect when, by punishing behavior which violates a citizen’s Fourth Amendment rights and removing the incentive for its repetition, it alters the behavior of individual law-enforcement officers or the policies of their departments”)(internal citations and quotations omitted); [Sanna v. Dipaolo](#), 265 F.3d 1, 7 (1st Cir. 2001)(Noting that, “the exclusion of the evidence derived, directly or indirectly, from [a Fourth Amendment] violation ... is designed to deter law enforcement personnel from disregarding constitutional mandates”).

3. **Historical Development of the Rule**

- a. **Weeks v. United States, 232 U.S. 383 (1914).** In [Weeks](#), the Supreme Court first adopted the exclusionary rule for violations of the Fourth Amendment. The rationale for the rule’s adoption was simple: In cases where illegally seized evidence “can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.” However, at this point in history, the exclusionary rule applied only to federal law enforcement officers. It did not apply to illegal searches by state law enforcement personnel. This anomaly resulted in what was known as the “silver platter doctrine,” in which state law enforcement officers could turn over illegally obtained evidence to federal authorities for use in federal prosecutions. The Supreme Court later abolished the “silver platter doctrine” in [Elkins v. United States](#), 364 U.S. 206 (1960).
- b. **Mapp v. Ohio, 367 U.S. 643 (1961).** In [Mapp](#), the Supreme Court, by means of the Due Process Clause of the Fourteenth Amendment, imposed the exclusionary rule of the Fourth Amendment on the states. As stated by the Court, the exclusionary rule was applicable to the states and “is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause.” *Id.* at 660.
- c. **Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).** In [Silverthorne](#), the Supreme Court established the “fruit of the poisonous tree” doctrine. This doctrine generally prohibits using illegally seized evidence as a means of obtaining still more evidence. Here, after recognizing that certain documents had been obtained in an unconstitutional manner, the prosecuting attorney directed that they be

returned to the company. Before returning them, however, photographs were taken. The prosecuting attorney then issued a subpoena for the production of the documents, using the photographs for as the basis. In sum, the Court held:

"The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed." [Id.](#) at 392.

4. **A Defendant Must Make Two (2) Showings to Benefit From Application of the Exclusionary Rule.** "A party seeking exclusion of evidence on Fourth Amendment grounds must demonstrate both actual police misconduct that violated the defendant's Fourth Amendment rights, and that the evidence to be excluded was in a fact a product of the police misconduct." [United States v. Williams](#), 356 F.3d 1268, 1272 (10th Cir. 2004).

G. EPO #7: IDENTIFY EXCEPTIONS TO THE EXCLUSIONARY RULE, E.G., NO STANDING TO OBJECT, GOOD FAITH, INEVITABLE DISCOVERY, AND IMPEACHMENT

1. **Evidence Obtained in Violation of the Fourth Amendment May Be Admissible Against a Defendant in Certain Circumstances.** "Despite its broad deterrent purpose, the exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons." [United States v. Calandra](#), 414 U.S. 338, 348 (1974).
2. **There Are a Variety of Exceptions to the Exclusionary Rule.** Listed below are some of the more common exceptions to the exclusionary rule.
 - a. **Evidence Will Be Admissible if the Defendant Has No Standing to Object.** "The Fourth Amendment is 'a personal right that must be invoked by an individual.'" [Minnesota v. Carter](#), 525 U.S. 83, 88 (1998). "In order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable." [Id.](#) at 88. Thus, "only defendants whose Fourth Amendment rights have been violated [may] benefit from the [exclusionary] rule's protections." [Rakas v. Illinois](#),

439 U.S. 128, 134 (1978). See also [Rawlings v. Kentucky](#), 448 U.S. 98, 106 (1980) (Finding that defendant lacked standing to object to a search of a friend's purse because he "had no legitimate expectation of privacy in [the] purse at the time of the search"); [Rakas](#), 439 U.S. at 140 ("The question is whether the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it"); and [United States v. Salvucci](#), 448 U.S. 83, 93 (1980); (Court noted that key issue when discussing standing was "whether [the defendant] had an expectation of privacy in the area searched").

b. Evidence May Be Admissible to Impeach the Defendant.

The Supreme Court has repeatedly held that "when defendants testify, they must testify truthfully or suffer the consequences." [United States v. Havens](#), 446 U.S. 620, 626 (1980). Where a defendant takes the witness stand and testifies falsely, the government may cross-examine the defendant and impeach him with evidence that was obtained in violation of the Fourth Amendment. Were it otherwise, "the defendant's constitutional shield against having illegally seized evidence used against him could be 'perverted into a license to use perjury by way of a defense.'" *Id.* "The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him." [Michelson v. United States](#), 335 U.S. 469, 479 (1948). Under the impeachment exception, illegally obtained evidence can be used to impeach:

- 1) **Any testimony given by a defendant on direct examination.** [Walder v. United States](#), 347 U.S. 62 (1954); or
- 2) **A defendant's statements made in response to proper cross-examination reasonably suggested by the defendant's direct examination.** [United States v. Havens](#), 446 U.S. 620, 627 (1980).

However, suppressed evidence may only be used to impeach the defendant's testimony. This exception has not been expanded to allow impeachment of other defense witnesses with illegally seized evidence. [James v. Illinois](#), 493 U.S. 307 (1990). Thus, if the defendant elects not to take the witness stand, the impeachment exception is inapplicable.

- c. **Evidence Obtained in Good Faith Reliance Upon a Search Warrant May Be Admissible.** As a general rule, a law enforcement officer is not expected to question a probable cause determination made by a magistrate. [United States v. Krull](#), 480 U.S. 340, 349 (1987). Instead, “a magistrate’s determination of probable cause is to be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the magistrate could reasonably conclude that the items sought to be seized are associated with the crime and located in the place indicated.” [United States v. Spry](#), 190 F.3d 829, 835 (7th Cir. 1999)(internal quotations omitted), cert. denied, 528 U.S. 1130 (2000). In [United States v. Leon](#), 468 U.S. 897 (1984), the Supreme Court carved out a “good faith” exception to the exclusionary rule based on the premises outlined above.

- 1) **General Rule – Where An Officer Relies in Good Faith on a Warrant Issued by a Neutral and Detached Magistrate, Evidence Obtained Will Be Admissible.** In sum, the “good faith” exception provides that, if a neutral and detached judicial officer erroneously issues a search warrant (and, presumably, an arrest warrant) based upon what is reasonably believed to be probable cause, law enforcement officers may still retain the fruits of the search and/or seizure. See, e.g., [United States v. Scroggins](#), 361 F.3d 1075, 1084 (8th Cir. 2004)(“The good-faith exception is perfectly suited for cases ... when the judge’s decision was borderline”); [United States v. Ricciardelli](#), 998 F.2d 8, 15 (1st Cir. 1993)(“If ... the warrant’s defectiveness results from mere technical errors, bevues by the magistrate not readily evident to a competent officer, or borderline calls about the existence of probable cause, then the evidence may be used, despite the warrant’s defectiveness”).

- a) **Rationale Behind the “Good Faith” Exception.** In [Leon](#), the Court announced three (3) separate rationale’s underlying the adoption of a “good faith” exception to the exclusionary rule.

- (1) **Exclusionary Rule is to Deter Police, Rather Than Judges.** “First, the exclusionary rule is designed to deter

police misconduct rather than to punish the errors of judges and magistrates.” [Id.](#) at 916.

- (2) **No Evidence Exclusionary Rule Should Apply Where Judges are Mistaken.** “Second, there exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion.” [Id.](#)
- (3) **Application of the Rule Will Not Have a Significant Deterrent Effect on Judges.** “Third, and most important, ... [there] is no basis for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate.” [Id.](#)

See also [United States v. Carpenter](#), 341 F.3d 666, 669 (8th Cir. 2003)(In creating a “good faith” exception, “the Court drew a clear distinction between the motivations of detached, neutral magistrates and those of partisan enforcement officers who are ‘engaged in the often competitive enterprise of ferreting out crime’”(quoting [Leon](#), 468 U.S. at 914); [United States v. Capozzi](#), 347 F.3d 327, 332 (1st Cir. 2003), cert. denied, 540 U.S. 1168, 124 S. Ct. 1187 (2004)(“The [Supreme] Court recognized that the purpose of this exclusionary rule is to deter police misconduct; therefore, it declined to apply the rule in circumstances where an officer acts in good faith to obtain a warrant because suppression in such instances does not ‘logically contribute to the deterrence of Fourth Amendment violations’”(citation omitted).

- b) **The “Good Faith” Exception Has Limitations.** However, the “good faith”

exception is not without limits. See, e.g., [United States v. Payne](#), 341 F.3d 393, 399-400 (5th Cir. 2003); [Capozzi](#), 347 F.3d at 332 (Noting that, “while [Leon](#) restricts the application of the exclusionary rule, it does not eliminate it”); [United States v. Goody](#), 377 F.3d 834, 837 (8th Cir. 2004)(Noting that “good faith is not a magic lamp for police officers to rub whenever they find themselves in trouble,” and that “the exception is inapplicable in certain circumstances”)(internal citations and quotation marks omitted). Specifically, in [Leon](#), “the Court provided detailed guidance to define those limited situations in which reliance on a warrant could not justify suspension of the ‘extreme sanction of exclusion.’” [Carpenter](#), 341 F.3d at 669. The exception will not apply if any of the following four circumstances.

- (1) **If the Affidavit Contained False or Misleading Information, the Good Faith Exception Will Not Apply.** First, “suppression ... remains an appropriate remedy If the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.” [Leon](#), 468 U.S. at 923 [citing [Franks v. Delaware](#), 438 U.S. 154 (1978)]. This issue is discussed more fully in **EPO # 13**.
- (2) **If the Magistrate Judge Whom Issued the Warrant was Not Neutral and Detached, the Good Faith Exception Will Not Apply.** Second, “the exception ... will also not apply in cases where the issuing magistrate wholly abandoned his judicial role ...; in such circumstances, no reasonably well trained officer should rely on the warrant.” [Leon](#), 468 U.S. at 923. See also [Carpenter](#), 341 F.3d at 670 (“In such a case, the issuing magistrate does not serve as a neutral and detached actor, but rather as a ‘rubber stamp for the police’ and ‘an adjunct law enforcement

officer”)(*quoting Leon*, 468 U.S. at 914); *United States v. Koerth*, 312 F.3d 862, 868 (7th Cir. 2002), *cert. denied*, 538 U.S. 1020 (2003)(“An officer may not rely upon a search warrant if he is aware or had reason to believe that the magistrate improperly issued the warrant without meaningfully and critically evaluating the evidence presented at the probable cause hearing”).

- (3) **Where the Warrant Clearly Lacks Probable Cause, the Good Faith Exception Will Not Apply.** “Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’” *Leon*, 468 U.S. at 923.
- (4) **Where the Warrant is Facially Deficient, the Good Faith Exception Will Not Apply.** Finally, there might be cases in which “a warrant may be so facially deficient - i.e., in failing to particularize the place to be searched or the things to be seized - that the executing officers cannot reasonably presume it to be valid.” ” *Leon*, 468 U.S. at 923.

- 2) **The Good Faith Exception Will Apply to Erroneous Arrest Records.** When an arrest is made based on a law enforcement officer’s reasonable reliance upon erroneous computer arrest records, the “good faith” exception will apply to any evidence seized during search incident to arrest. *Arizona v. Evans*, 514 U.S. 1 (1995). To suppress the evidence in such circumstances would not further the deterrent purpose of the exclusionary rule: “Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, they have no stake in the outcome of particular criminal prosecutions. The threat of exclusion of evidence could not be expected to deter such individuals from failing to inform police officials

that a warrant had been quashed.” [Id.](#) at 15 (citations omitted).

- d. **Evidence Obtained During a Foreign Search May Be Admissible.** As a general rule, “the Fourth Amendment and the exclusionary rule do not ordinarily apply to foreign searches and seizures.” [United States v. Mitro](#), 880 F.2d 1480, 1482 (1st Cir. 1989). See also [United States v. Janis](#), 428 U.S. 433, 456 n.31 (1976) (“It is well established, of course, that the exclusionary rule, as a deterrent sanction, is not applicable where ... a foreign government commits the offending act”). Nevertheless, “[f]or United States citizens and resident aliens, the Fourth Amendment applies to foreign searches and seizures: (1) conducted exclusively by the United States government, (2) conducted by the United States in a ‘joint venture’ with foreign authorities, or (3) where foreign authorities act as agents for the United States.” *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1116 (March 2004).

- 1) **Searches By Foreign Authorities.** “The Fourth Amendment exclusionary rule does not apply to foreign searches by foreign officials in enforcement of foreign law, even if those from whom evidence is seized are American citizens.” [United States v. Rose](#), 570 F.2d 1358, 1361 (9th Cir. 1978). See also [United States v. Behety](#), 32 F.3d 503, 510 (11th Cir. 1994), cert. denied, 515 U.S. 1137 (1995) (“Evidence obtained by foreign police officials from searches conducted in their country is generally admissible in federal court regardless of whether the search complied with the Fourth Amendment”). Accordingly, “[t]he ‘exclusionary rule’ does not require the suppression of evidence seized by foreign police agents, for the actions of an American court are unlikely to influence the conduct of foreign police.” [United States v. Hensel](#), 699 F.2d 18, 25 (1st Cir.), cert. denied, 461 U.S. 958 (1983). See also [Stonehill v. United States](#), 405 F.2d 738, 743 (9th Cir. 1968), cert. denied, 395 U.S. 960, reh’g denied, 396 U.S. 870 (1969) (“Neither the Fourth Amendment of the United States Constitution nor the exclusionary rule of evidence, designed to deter Federal officers from violating the Fourth Amendment, is applicable to the acts of foreign officials”); [United States v. Barona](#), 56 F.3d 1087, 1091 (9th Cir. 1995) (Same). However, there “are two well-established exceptions to this rule:

(1) where foreign police conduct 'shock[s] the judicial conscience,' and (2) where American agents 'participated in the foreign search, or . . . [the foreign officers acted] as agents for their American counterparts.'" [Hensel](#), 699 F.2d at 25 (internal quotations and citations omitted).

a) **Conduct That "Shocks the Conscience."**

Based upon their inherent supervisory powers, as well as the Due Process Clause, a Federal court "may suppress any foreign search evidence obtained by methods that "shock the conscience." *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1120. See also [Barona](#), 56 F.3d at 1092 ("This type of exclusion is not based on our Fourth Amendment jurisprudence, but rather on the recognition that we may employ our supervisory powers when absolutely necessary to preserve the integrity of the criminal justice system"). "Only conduct on the part of the foreign police that shocks the judicial conscience could warrant the suppression of foreign-seized evidence. Circumstances that will shock the conscience are limited to conduct that 'not only violates U.S. notions of due process, but also violates fundamental international norms of decency.'" [Mitro](#), 880 F.2d at 1483, 1484 (internal footnote omitted).

NOTE: "[T]here is some debate as to whether a federal court has the authority to exclude evidence seized by foreign officials even in circumstances that shock the judicial conscience in light of [United States v. Payner](#), 447 U.S. 727 (1980), where the Supreme Court held that a federal court could not exclude evidence under its supervisory power where the defendant would not have standing to seek exclusion under the Fourth Amendment." [Mitro](#), 880 F.2d at 1484 n.4.

b) **Instrument/Agent or Participation.** "The second exception to the inapplicability of the exclusionary rule applies when United States agents' participation in the investigation is so

substantial that the action is a joint venture between United States and foreign officials." [Barona](#), 56 F.3d at 1092 (citation and internal quotation marks omitted).

- (1) **Joint Venture.** The Fourth Amendment will apply if "American participation in the foreign search or seizure rendered the acts a joint venture." P. Joseph, *Warrantless Search Law Deskbook* § 5.5, p. 5-16.3 (2000). See [Stonehill](#), 405 F.2d at 743 ("The Fourth Amendment could apply to raids by foreign officials only if Federal agents so substantially participated in the raids so as to convert them into joint ventures between the United States and the foreign officials"); [United States v. Mount](#), 757 F.2d 1315, 1318 (D.C. Cir. 1985)(Collecting cases and noting "the exclusionary rule does apply to a foreign search if American officials or officers participated in some significant way, for in such a situation the deterrence principle may be deemed to operate").

NOTE: Whether the participation of Federal law enforcement officers renders a search a "joint venture" must be "determined by a thorough examination of the facts of each case." [Stonehill](#), 405 F.2d at 745. However, simply "providing information to a foreign functionary is not sufficient involvement for the Government to be considered a participant in acts the foreign functionary takes based on that information." [United States v. Marzano](#), 537 F.2d 257, 270 (7th Cir. 1976) (Collecting cases). Further, the "mere presence of federal officers is not sufficient to make the officers participants." *Id.* See also [Stonehill](#), 405 F.2d at 745; [United States v. Rosenthal](#), 793 F.3d 1214, 1231 (11th Cir. 1986), *cert. denied*, 480 U.S. 919 (1987)("Fourth

Amendment rights are generally inapplicable to an action by a foreign sovereign in its own territory in enforcing its own laws, even though American officials are present and cooperate in some degree”); [United States v. Johnson](#), 451 F.2d 1321 (4th Cir. 1971), cert. denied, 405 U.S. 1018 (1972).

- (2) **Instrument or Agent.** The mandates of the Fourth Amendment will also apply if “the foreign official was acting as an instrument or agent of an American government official” P. Joseph, *Warrantless Search Law Deskbook* § 5.5, p. 5-16.3 (2000).

- 2) **Searches of Non-Resident Aliens By American Law Enforcement Officers.** In [United States v. Verdugo-Urquidez](#), 494 U.S. 259 (1990), the Supreme Court addressed the issue of “whether the Fourth Amendment applies to the search and seizure by United States agents of property that is owned by a nonresident alien and located in a foreign country.” [Id.](#) at 261. In sum, the court answered this question in the negative, holding that “the purpose of the Fourth Amendment was to protect the people of the United States against arbitrary action by their own Government; it was never suggested that the provision was intended to restrain the actions of the Federal Government against aliens outside of the United States territory.” [Id.](#) at 266. The Court noted that “the people’ protected by the Fourth Amendment ... refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” [Id.](#) at 265. Accordingly, “aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with the country.” [Id.](#) at 271. So, for example, “once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders.” [Id.](#) Alternatively, where the alien was lawfully, albeit involuntarily, brought to this country, “this sort of

presence ... is not of the sort to indicate any substantial connection with our country.” [Id.](#)

NOTE: “The Fourth Amendment was not ‘understood by contemporaries of the Framers to apply to activities of the United States directed against aliens in foreign territory or in international waters.’ The Fourth Amendment does not apply to a search of aliens conducted in foreign territory. The Fourth Amendment does not apply to the search of non-resident aliens on a ship in international waters.” [United States v. Aikins](#), 946 F.2d 608, 613 (9th Cir. 1990)(internal citations omitted).

- a) **Controls Over American Activities in Foreign Countries.** “Although the Fourth Amendment does not apply to foreign searches of the property of a non-resident alien, controls exist over the investigative activities of American agents operating in foreign countries.” *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1117. Specifically, “[b]esides the obligations imposed by the host countries themselves, Congress has restricted American agents’ foreign activities.” *Id.* For example, “[i]n the narcotics area, Congress has prohibited American agents from directly effecting ‘an arrest in any foreign country as part of any foreign police action with respect to narcotic control efforts’ and has prohibited American agents from interrogating or being present ‘during the interrogation of any United States person arrested in any foreign country with respect to narcotic control efforts.’” *Id.* (citing [Title 22 U.S.C. § 2291](#)).
- b) **Agreements and Treaties.** “The United States has entered into agreements and treaties with other countries which provide for mutual legal assistance and establish procedures for obtaining evidence in criminal investigations abroad.” *Id.* Further, “[t]he Office of International Affairs, (202) 514-0000, provides advice and assistance regarding the requirements for these agreements, and maintains a current list of mutual legal

assistance agreements and treaties.” Id. This list can be viewed on the DOJNET, at: <http://10.173.2.12/criminal/oia/MLAT.html>.

NOTE: A question that may be asked during a discussion of foreign searches and seizures is this: If a defendant is brought to this country to stand trial through a “forcible abduction,” may he still be tried in Federal court? In ruling on this question, the Supreme Court has noted that “the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court’s jurisdiction by reason of a ‘forcible abduction.’” Frisbie v. Collins, 342 U.S. 519, 511 (1952)[*citing* Ker v. Illinois, 119 U.S. 436, 444 (1886)]. Most recently, this concept was reiterated in United States v. Alvarez-Machain, 504 U.S. 655, 657 (1992), where the Court held that “a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, [does not] thereby acquire a defense to the jurisdiction of this country’s courts.” Instead, courts are to refer to the terms of the extradition treaty to determine whether the abduction was a violation. Thus, “[u]nder Alvarez-Machain, to prevail on an extradition treaty claim, a defendant must demonstrate, by reference to the express language of a treaty and/or the established practice thereunder, that the United States affirmatively agreed not to seize foreign nationals from the territory of its treaty partner.” United States v. Noriega, 117 F.3d 1206, 1213 (11th Cir. 1997), cert. denied, 523 U.S. 1060 (1998). Finally, at least one court has created an exception to the “Ker - Frisbie” rule for situations in which a defendant is brought to this country for trial through “the use of torture, brutality and similar outrageous conduct.” United States ex rel. Lujan v. Gengler, 510 F.2d 62, 65 (2d Cir.), cert. denied, 421 U.S. 1001 (1975). However, “[t]he Supreme Court has yet to rule on

this exception, and ‘no court ... which remanded the case for factual findings, has ever found conduct that rises to the level necessary to require the United States to divest itself of jurisdiction.’” Robert Iraola, [A Primer on Legal Issues Surrounding the Extraterritorial Apprehension of Criminals](#), 29 Am. J. Crim. L. 1, 8 (2001).

- 3) **Searches of United States Citizens and Resident Aliens in Foreign Countries.** “When conducted by, on behalf of, or jointly with the United States Government, the Fourth Amendment applies to searches and seizures against United States citizens and resident aliens while abroad.” *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1118.

- a) **When the Fourth Amendment Applies.**
Generally speaking, the Fourth Amendment applies to overseas searches in three (3) related situations:

- (1) **Searches By American Law Enforcement Personnel Only.** See, e.g., [United States v. Conroy](#), 589 F.2d 1258, 1264 (5th Cir.), cert. denied, 444 U.S. 831 (1979) (“The Fourth Amendment not only protects all within our bounds; it also shelters our citizens wherever they may be in the world from unreasonable searches by our own government”).
- (2) **Searches By Foreign Law Enforcement Agents Acting On Behalf of the United States Government.** See, e.g., [Rose](#), 570 F.2d at 1362 (Noting that, “if American law enforcement officials participated in the foreign search, or if the foreign authorities actually conducting the search were acting as agents for their American counterparts, the exclusionary rule can be invoked”).
- (3) **Where Search is a “Joint Venture.”** See, e.g., [Behety](#), 32 F.3d at 510-511

(Noting “the exclusionary rule may be invoked if American law enforcement officials substantially participated in the search or if the foreign officials conducting the search were actually acting as agents for their American counterparts... Some courts have described this exception as the joint venture doctrine, and explain that it requires that the participation of federal agents be so substantial so as to convert the search into a joint venture”).

- b) **Any Overseas Search Must Be Reasonable.** [Rule 41](#) of the Federal Rules of Criminal Procedure does not authorize a Federal judge to issue a search warrant for a location outside the United States... In fact, even if such a warrant were issued, it would be a “dead letter outside the United States.” [Verdugo-Urquidez](#), 494 U.S. at 274. And, “[e]ven if no warrant were required, American agents would have to articulate specific facts giving them probable cause to undertake a search or seizure if they wished to comply with the Fourth Amendment” [Id.](#) Instead, any search that is conducted must meet the reasonableness requirements of the Fourth Amendment. While American “law governs whether illegally obtained evidence should be excluded, and the essence of [that] inquiry is whether exclusion serves the rationale of deterring federal officers from unlawful conduct,” [United States v. Peterson](#), 812 F.2d 486, 491-92 (9th Cir. 1987), any analysis of the reasonableness of a foreign search will generally include a review of local foreign law on the subject. [Barona](#), 56 F.3d at 1092 (“If a joint venture is found to have existed, “the law of the foreign country must be consulted at the outset as part of the determination whether or not the search was reasonable”)(citation omitted).

- (1) **Compliance With Foreign Law Not Dispositive On Issue of Reasonableness.** At least two Federal courts have decided that compliance with the law of the foreign nation in

which the search occurred is not dispositive on the issue of a search's reasonableness. See [Conroy](#), 589 F.2d at 1265 ("The mere consent of foreign authorities to a seizure that would be unconstitutional in the United States does not dissipate its illegality even though the search would be valid under local law"); [United States v. Andreas](#), 1998 U.S. Dist. LEXIS 1014, at *5 (N.D. Ill. 1998)(unpublished), aff'd, 216 F.3d 645 (7th Cir.), cert. denied, 531 U.S. 1014 (2000) (Noting "the Fourth Amendment reasonableness standard applies to any resulting searches and the law of the foreign country must be consulted to determine the reasonableness of such searches").

- (2) **Compliance With Foreign Law is Dispositive On Issue of Reasonableness.** The Ninth Circuit Court of Appeals has determined that "compliance with foreign law alone determines whether the search violated the Fourth Amendment." [Barona](#), 56 F.3d at 1092. See also [Peterson](#), 812 F.2d at 491 (Noting that "local law of the [foreign country] governs whether the search was reasonable"); [United States v. Juda](#), 46 F.3d 961, 968 (9th Cir.), cert. denied, 515 U.S. 1169 (1995) (Noting that the "Fourth Amendment's reasonableness standard applies to United States officials conducting a search affecting a United States citizen in a foreign country," and that "a foreign search is reasonable if it conforms to the requirements of foreign law")(internal citations omitted).

NOTE: "If foreign law was not complied with, a search may be upheld under the good faith exception to the exclusionary rule when United States officials reasonably rely on foreign officials' representations of foreign law."

***Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1119. See, e.g., [Juda](#), 46 F.3d at 968; [Peterson](#), 812 F.2d at 492 (“The good faith exception is grounded in the realization that the exclusionary rule does not function as a deterrent in cases in which the law enforcement officers acted on a reasonable belief that their conduct was legal. ... We conclude that the reasoning applies as well to reliance on foreign law enforcement officers’ representations that there has been compliance with their own law”).**

e. **The Exclusionary Rule Does Not Apply to Evidence That Would Have Been “Inevitably” Discovered.**

“If the prosecution can establish by a preponderance of the evidence that ... information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received.” [Nix v. Williams](#), 467 U.S. 431, 444 (1984). This has become known as the “inevitable discovery” exception to the exclusionary rule. See, e.g., [United States v. Scott](#), 270 F.3d 30, 42 (1st Cir. 2001), cert. denied, 535 U.S. 1007 (2002)(Noting one exception to the exclusionary rule is “the inevitable discovery exception,” which “applies to any case in which the prosecution can show by a preponderance of the evidence that the government would have discovered the challenged evidence even had the constitutional violation to which the defendant objects never occurred”).

1) **Rationale for the Rule.** “The inevitable discovery doctrine is based on the same rationale as the independent source doctrine - that ‘the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been if no police error or misconduct had occurred.’” [United States v. Larsen](#), 127 F.3d 984, 986 (10th Cir. 1997), cert. denied, 522 U.S. 1140 (1998)(citation omitted).

2) **Courts Are Split on Whether an Investigation was**

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Ongoing at the Time of the Constitutional

Violation. The circuit courts of appeal are split on whether the “inevitable discovery” exception requires that law enforcement officers were actively pursuing an alternative investigation at the time the constitutional violation occurred. To state the issue differently, courts are split on the following: “At the time one officer is engaged in a search violative of the Fourth Amendment, must another officer have already set in motion an independent and lawful inquiry that would have led to the discovery of the same evidence?” Stephen E. Hessler, Note, [*Establishing Inevitability Without Active Pursuit: Defining the Inevitable Discovery Exception to the Fourth Amendment Exclusionary Rule*](#), 99 Mich. L. Rev. 238, 243 (2000).

- a) **Some Courts Require That Law Enforcement Be Actively Engaged in an Alternative Investigation for the Exception to Apply.** Some federal courts require the government to be actively involved in an independent investigation that would have “inevitably” resulted in the discovery of the evidence. See e.g., [*United States v. Villalba-Alvarado*](#), 345 F.3d 1007, 1019 (8th Cir. 2003) (Noting first element of “inevitable discovery” is that “there must be an ongoing line of investigation that is distinct from the impermissible or unlawful technique”); [*United States v. Lamas*](#), 930 F.2d 1099, 1102 (5th Cir. 1991) (Noting that, for exception to apply, the government must show, *inter alia*, that they were “actively pursuing a ‘substantial alternate line of investigation at the time of the constitutional violation’”)(citation omitted); [*United States v. Wilson*](#), 36 F.3d 1298, 1304 (5th Cir. 1994)(same); [*United States v. Eng*](#), 971 F.2d 854, 681 (2d Cir. 1992)(Agreeing with Fifth Circuit’s holding that “the alternate means of obtaining the evidence must at least be in existence and, at least to some degree, imminent, if yet unrealized”); . In so holding, these courts seem to seize upon language in Justice Brennan’s dissent in [*Nix*](#). See [*Nix*](#), 467 U.S. at 459 (Brennan, J., dissenting)(Noting the majority concluded “that unconstitutionally

obtained evidence may be admitted at trial if it inevitably would have been discovered in the same condition by an independent line of investigation that was already being pursued when the constitutional violation occurred”).

- b) **Alternatively, Some Courts Do Not Require That an Active Investigation Be Underway for the Exception to Apply.** On the other hand, some federal courts have found that the “inevitable discovery exception applies whenever an independent investigation inevitably would have led to discovery of the evidence, whether or not the investigation was ongoing at the time of the illegal police conduct.” [United States v. Souza](#), 223 F.3d 1197, 1203 (10th Cir. 2000). See also [United States v. Ford](#), 22 F.3d 374, 377 (1st Cir.), cert. denied, 513 U.S. 900 (1994)(noting court had previously declined an “ongoing investigation” requirement)[citing [United States v. Silvestri](#), 787 F.2d 736, 746 (1st Cir. 1986), cert. denied, 487 U.S. 1233 (1988)]; [United States v. Thomas](#), 955 F.2d 207, 210 (4th Cir. 1992); [United States v. Kennedy](#), 61 F.3d 494, 499-500 (6th Cir. 1995), cert. denied, 517 U.S. 1119 (1996)(“Therefore, we hold that an alternate, independent line of investigation is not required for the inevitable discovery exception to apply”); [United States v. Boatwright](#), 822 F.2d 862, 864 (9th Cir. 1987) (“The existence of two independent investigations at the time of discovery is not, therefore, a necessary predicate to the inevitable discovery exception”).

In two more recent decisions, the Sixth Circuit Court of Appeals has ignored the reasoning of [Kennedy](#), *supra*, and required “the government to proffer clear evidence ‘of an independent, untainted investigation that inevitably would have uncovered the same evidence’ as that discovered through the illegal search.” [United States v. Dice](#), 200 F.3d 978, 986 (6th Cir. 2000). See also [United States v. Haddix](#), 239 F.3d 766, 679 (6th Cir. 2001). This is contrary to Sixth

Circuit rules, however, which require an “en banc” decision to overrule a published opinion. Accordingly, [Kennedy](#) is still considered to be the law of the Sixth Circuit on this issue.

- f. **The Exclusionary Rule Does Not Apply to Deportation Proceedings.** The exclusionary rule does not apply to deportation proceedings. [INS v. Lopez-Mendoza](#), 468 U.S. 1032, 1050 (1984).
- g. **The Exclusionary Rule Does Not Apply to Grand Jury Proceedings.** The exclusionary rule does not apply to grand jury proceedings. [United States v. Calandra](#), 414 U.S. 338, 354 (1974).
- h. **The Exclusionary Rule Does Not Apply to Sentencing Proceedings.** The exclusionary rule does not apply during sentencing proceedings. See, e.g., [United States v. Torres](#), 926 F.2d 321, 325 (3d Cir. 1991)(“We hold, therefore, that evidence suppressed as in violation of the Fourth Amendment may be considered in determining appropriate guideline ranges”); [United States v. Brimah](#), 214 F.3d 854, 859 (7th Cir. 2000)(“We join the other circuits who have considered this issue and hold that the exclusionary rule does not bar the consideration at sentencing of evidence seized in violation of the Fourth Amendment”).
- i. **The Exclusionary Rule Does Not Apply to Civil Tax Proceedings.** The exclusionary rule does not apply to civil tax proceedings. [United States v. Janis](#), 428 U.S. 433, 454 (1976) (“We conclude that exclusion from federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs imposed by the exclusion”).

H. EPO #8: IDENTIFY THE LIMITATIONS OF AN ARREST WARRANT

- 1. **General Rule – There Are a Variety of Ways in Which Federal Arrest Warrants May Be Obtained.** Within the federal system, arrest warrants may be obtained through a variety of different mediums, including:
 - a. **Criminal Complaints;**
 - b. **Grand Jury Indictments; and**

c. **Informations.**

2. **The Rules Regarding the Form and Issuance of Arrest Warrants are Contained in the Federal Rules of Criminal Procedure.** The rules regarding the form and issuance of federal arrest warrants are contained in two [Rules 4](#) and [9](#) of the Federal Rules of Criminal Procedure.
 - a. **Arrest Warrant Upon Complaint.** [Rule 4](#) of the Federal Rules of Criminal Procedure addresses the issuance of federal arrest warrants based upon a complaint. Subsection (a) of the rule provides, in pertinent part, that “if the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it.” As used in this rule, a “complaint” is defined by [Rule 3](#) as “a written statement of the essential facts constituting the offense charged. It must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.”
 - b. **Arrest Warrant Upon Indictment or Information.** [Rule 9](#) of the Federal Rules of Criminal Procedure addresses the issuance of federal arrest warrants based upon an indictment or information. Subsection (a) of the rule provides, in pertinent part, that “the court must issue a warrant - or at the government’s request, a summons - for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it.” Further, “the court may issue more than one warrant or summons for the same defendant.”
3. **The Form of the Warrant.** [Rule 4\(b\)\(1\)](#) describes the form that a federal arrest warrant based upon a complaint must take. When the warrant is based upon an indictment or information, it “must conform to [Rule 4\(b\)\(1\)](#),” [Rule 9\(b\)\(1\)](#), with certain exceptions, noted below. Specifically, a federal arrest warrant must contain the following:
 - a. **Signature of Magistrate Judge.** First, the warrant must be “signed by the magistrate judge.” For arrest warrants based upon an indictment or information, the warrant “must be signed by the clerk.” [Rule 9\(b\)\(1\)](#).
 - b. **Name of the Defendant.** Second, the warrant must “contain the defendant’s name or, if it is unknown, a name or description by which the defendant can be identified with

reasonable certainty.”

- c. **Offense Charged.** Third, the warrant must “describe the offense charged in the complaint.” For arrest warrants based upon an indictment or information, the warrant “must describe the offense charged in the indictment or information.” [Rule 9\(b\)\(1\)](#).
- d. **Command to Arrest.** Finally, the warrant must “command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.”

4. **The Execution of the Warrant.** [Rule 4\(c\)](#) describes the manner in which arrest warrants based upon a complaint must be executed. When the warrant is based upon an indictment or information, “the warrant must be executed ... as provided in [Rule 4\(c\)\(1\), \(2\), and \(3\)](#).” [Rule 9\(c\)\(1\)\(A\)](#).

- a. **Who Can Execute?** [Rule 4\(c\)\(1\)](#) provides that “only a marshal or other authorized officer may execute a warrant.”
- b. **Territorial Limits.** [Rule 4\(c\)\(2\)](#) provides, that an arrest warrant “may be executed ... within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest.”
- c. **Time Limits.** “Unlike a search warrant, an arrest warrant typically does not require execution within a specified time period or ‘forthwith.’” [United States v. Watson](#), 423 U.S. 411, 452 n.16 (1976)(Marshall, J., dissenting). See also [United States v. Jones](#), 377 F.3d 1313, 1314 (11th Cir. 2004)(“Although the officer did not serve the warrant immediately upon his discovery of it, delay in executing [an arrest] warrant is not itself unlawful”); [United States v. Cravero](#), 545 F.2d 406, 413 (5th Cir. 1976)(“[A] suspect has no constitutional right to be arrested earlier than the police choose”).
- d. **Manner of Execution.** [Rule 4\(c\)\(3\)\(A\)](#) provides, in pertinent part, that “a warrant is executed by arresting the defendant.”
 - 1) **Upon Arrest, Officer Must Show the Warrant to the Defendant.** “Upon arrest, an officer possessing the warrant must show it to the defendant.” [Rule 4\(c\)\(3\)\(A\)](#).
 - 2) **However, the Arresting Officer Need Not Have a Copy of the Warrant at the Time of Arrest.** There is no requirement, however, that an officer have the warrant present at the time of the arrest. Specifically, [Rule 4\(c\)\(3\)\(A\)](#) provides that, “If the officer does not

possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the warrant to the defendant as soon as possible." See [United States v. \\$ 64,000.00 in United States Currency](#), 722 F.2d 239, 244 (5th Cir. 1984)("The officer need not have the warrant in his possession, though 'upon request' he shall show it to the defendant 'as soon as possible'"); [United States v. Buckner](#), 717 F.2d 297, 301 (6th Cir. 1983)("The fact that the officers did not have the arrest warrant in hand is of no consequence"); [United States v. George](#), 625 F.2d 1081, 1086 (3rd Cir. 1980)("Even in cases where an arrest warrant has actually been issued, the arresting officer is not required to have it in his possession").

- 3) **Some Courts Hold That An Arrest Warrant Compels Arresting the Defendant.** Some courts have held that, "once an arrest warrant has been issued, the warrant "compels arrest and, unless it is retracted by the court, the arresting officer who chooses to ignore its command operates at some personal risk." [Benjamin v. United States](#), 554 F. Supp. 82, 86 (E.D.N.Y. 1982)(citing [Title 18 U.S.C. § 755](#), "Officer Permitting Escape"). See also [Rodriguez v. United States](#), 847 F. Supp. 231, 235 (D.P.R. 1993), *aff'd*, 54 F.3d 41 (1st Cir. 1995)[*"Had the officers not arrested Rodriguez, who they reasonably believed was the subject on the arrest warrant, and had she fled the jurisdiction, criminal charges could have been brought against the Deputy Marshals, pursuant to 18 U.S.C. § 755, for failure to comply with their duty under [Rule 4(c)(3)(A)]"*] (internal footnote and citation omitted). Alternatively, some courts have noted that "law enforcement officials are under no constitutional duty to terminate a criminal investigation the moment they have an arrest warrant in their hands." [United States v. Toro](#), 840 F.2d 1221, 1233 (5th Cir. 1988).

5. **Return of the Warrant.** Both [Rule 4](#) and [Rule 9](#) provide for a return of the arrest warrant.
- a. **Rule 4(c)(4)(A).** When an individual is arrested based upon a warrant issued upon a complaint, [Rule 4\(c\)\(4\)\(A\)](#) provides for a return of that warrant. Specifically, the rule states: "After executing a warrant, the officer must return it to the

judge before whom the defendant is brought in accordance with [Rule 5](#). At the request of an attorney for the government, an unexecuted warrant must be brought back to and canceled by a magistrate judge or, if none is reasonably available, by a state or local judicial officer."

- b. [Rule 9\(c\)\(2\)](#). When an individual is arrested based upon a warrant issued upon an indictment or information, [Rule 9\(c\)\(2\)](#) provides the warrant "must be returned in accordance with [Rule 4\(c\)\(4\)](#)."

I. EPO #9: IDENTIFY WHEN AN ARREST INVOLVING A FELONY REQUIRES THE USE OF A WARRANT

1. **General Rule – A Law Enforcement Officer May Make A Warrantless Arrest For a Felony Offense Upon Probable Cause.** "The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony...." [Carroll v. United States](#), 267 U.S. 132, 156 (1925). However, this rule is not without limitations, as discussed below.
2. **An Officer With Probable Cause May Make a Warrantless Arrest for Felony Offenses in a Public Place.** Where a law enforcement officer has probable cause to believe that a suspect located in a public place has committed a felony offense, the officer may make a warrantless arrest of the individual. See [Carroll v. United States](#), 267 U.S. 132, 156 (1925) ("The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony...."); [United States v. Dickey-Bey](#), 393 F.3d 449, 453 (4th Cir. 2004) ("It is well-settled under Fourth Amendment jurisprudence that a police officer may lawfully arrest an individual in a public place without a warrant if the officer has probable cause to believe that the individual has committed, is committing, or is about to commit a crime"); [Sparing v. Village of Olympia Fields](#), 266 F.3d 684, 688 (7th Cir. 2001) ("Police officers may constitutionally arrest an individual in a public place (e.g., outside) without a warrant, if they have probable cause")(citation omitted); [United States v. Goddard](#), 312 F.3d 1360, 1362 (11th Cir. 2002), *cert. denied*, 538 U.S. 969 (2003) ("The Fourth Amendment permits warrantless arrests in public places where an officer has probable to believe that a felony has occurred"). In [United States v. Watson](#), 423 U.S. 411, 418 (1976), the Supreme Court emphasized that the Fourth Amendment incorporated "the ancient common law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in this presence if there was reasonable grounds for making the

arrest."

3. **Entering an Arrestee's Home to Make an Arrest.** "It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" Welsh v. Wisconsin, 466 U.S. 740, 748 (1984). *See also* Payton v. New York, 445 U.S. 573, 590 (1980) ("The common law maxim 'every man's house is his castle' is part of our Fourth Amendment jurisprudence prohibiting unreasonable searches and seizures"). For that reason, arresting a person in his home without a warrant is "normally a violation of the Fourth Amendment, even if there is probable cause to arrest" the person. Hadley v. Williams, 368 F.3d 747, 749 (7th Cir. 2004).

- a. **Warrantless Entries Into a Home Are Presumptively Unreasonable.** Accordingly, "a search of the home without a warrant is a well-settled violation of the Fourth Amendment, and the Supreme Court in Payton simply made clear that it is no less so when the search is conducted in order to seize (i.e., by an arrest) a person, rather than property." Sparing, 266 F.3d at 689 (citation omitted). *See also* Payton, 445 U.S. at 586 ("It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable"); United States v. Leverington, 397 F. 3d 1112, 1114 (8th Cir. 2005) ("The Fourth Amendment generally prohibits entry to a home without a warrant, unless the circumstances meet an established exception to the warrant requirement ...").
- b. **Forcing a Subject Outside is the Same as an Entry by LEOs.** The location of the arrested person, and not the arresting agents, determines whether an arrest occurs in-house or in a public place. If the police force a person out of his house to arrest him, the arrest has taken place inside the home. Fisher v. City of San Jose, 475 F.3d 1049 (9th Cir. 2007).
- c. **Entries Into a Home to Make an Arrest Require a Warrant, Consent, or Exigent Circumstances.** In order to enter a person's home to make an arrest, a law enforcement officer must have
- 1) **A Warrant;**
 - 2) **Consent;** or
 - 3) **Exigent Circumstances.**

Payton, 445 U.S. at 588, 589 ("To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is clearly established under statutory authority and when probable cause is clearly present")(citation omitted).

NOTE: Recall that, for Fourth Amendment purposes, a hotel room is treated essentially the same, if not exactly the same, as a home. For that reason, "police officers may only gain visual access to a hotel room if (1) the room's occupant voluntarily opens the hotel room door in response to a request (but not a threat or a command), (2) the officers have a warrant, or (3) the officers have probable cause and one of the exceptions to the warrant requirement exists." United States v. Washington, 387 F.3d 1060, 1070 (9th Cir. 2004).

- d. **Arrest Warrants Allow Officers to Enter the Arrestee's Home to Make an Arrest When There is Reason to Believe the Suspect is Inside.** "For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives *when there is reason to believe the suspect is within.*" Payton, 445 U.S. at 603 (emphasis added). See also United States v. Powell, 379 F.3d 520, 523 (8th Cir. 2004)(Noting "that police do not need a search warrant to enter the home of the subject of an arrest warrant in order to effectuate the arrest")(citation omitted). "Because an arrest warrant authorizes the police to deprive a person of his liberty, it necessarily also authorizes a limited invasion of that person's privacy interest when it is necessary to arrest him in his home." Steagald v. United States, 451 U.S. 204, 214 n.7 (1981).

- 1) **An Officer Must Have "Reason to Believe" That (a) the Suspect Lives at the Residence and (b) is in the Residence at the Time of Entry.** To enter a residence with an arrest warrant, an officer must meet two basic requirements. "A valid arrest warrant carries with it the authority to enter the residence of the person named in the warrant in order to execute the warrant" so long as the police have:

- a) **A reasonable belief that the suspect resides at the place to be entered, and**

- b) **A reasonable belief that he is currently present in the dwelling.** See United States v. Clayton, 210 F.3d 841, 843 (8th Cir. 2000)(citation omitted)(emphasis added); United States v. Magluta, 44 F.3d 1530, 1535 (11th Cir.), cert. denied, 516 U.S. 869 (1995)(Officers must have "a reasonable belief that the location to be searched is the suspect's dwelling, and that the suspect is within the residence at the time of entry"); Valdez v. McPheters, 172 F.3d 1220, 1224 (10th Cir. 1999)("[P]olice officers entering a residence pursuant to an arrest warrant must demonstrate (1) a reasonable belief that the arrestee lived in the residence, and (2) a reasonable belief that the arrestee could be found within the residence at the time of the entry"); United States v. Barrera, 464 F.3d 496 (5th Cir 2006) (reviewing factors officers may use to develop a reasonable belief that a suspect resides in a particular location, including an address provided to a bail bondsman or creditors, customer lists for utility services, vehicle registration records, reports of neighbors or commercial delivery employees, surveillance, and information from parole officers).

NOTE: Of course, "[t]he officers' assessment need not in fact be correct; rather, they need only reasonably believe that the suspect resides at the dwelling to be searched and is currently present at the dwelling." Powell, 379 F.3d at 523 (citation omitted).

- 2) **Courts are Split on Whether "Reason to Believe" Means the Same or Something Less Than "Probable Cause."** In order to enter a residence with an arrest warrant to effect an arrest, a law enforcement officer must have "reason to believe the suspect is within." What exactly is meant by the phrase "reason to believe" is an open question, and has resulted in a split among the federal circuits.
- a) **The Majority View.** A majority of the circuits hold that "reason to believe" is a lesser standard than probable cause. See, e.g.,

United States v. Route, 104 F.3d 59, 62 (5th Cir.), cert. denied, 521 U.S. 1109 (1997)("To the extent that this court has not already done so ... we adopt today the 'reasonable belief' standard of the Second, Third, Eighth, and Eleventh Circuits")(footnotes omitted); Valdez, 172 F.3d at 1227 n.5 ("While probable cause itself is a relatively low threshold of proof, it is a higher standard than 'reasonable belief,' which is, as everyone agrees, the appropriate standard")(citation omitted).

- b) **The Minority View.** However, the Ninth Circuit Court of Appeals has held that the "reason to believe" standard "should be read to entail the same protection and reasonableness inherent in probable cause." See, e.g., United States v. Diaz, 491 F.3d 1074 (9th Cir. 2007); United States v. Gorman, 314 F.3d 1105, 1110 (9th Cir. 2002). The Third Circuit Court of Appeals has also suggested that "reason to believe" is synonymous with probable cause. See United States v. Agnew, 385 F.3d 388 (3rd Cir. 2004), *vacated on other grounds and remanded for resentencing by Agnew v. United States*, 543 U.S. 1136 (U.S. 2005) (Noting that, pursuant to Payton, "police may enter a suspect's residence to make an arrest armed only with an arrest warrant if they have **probable cause** to believe that the suspect is in the home")(emphasis added). The Sixth Circuit has expressly avoided deciding the issue. United States v. Hardin, 2008 U.S. App. LEXIS 18135 (6th Cir. 2008) (holding that the language addressing this question in its two prior cases, United States v. Jones, 641 F.2d 425 (6th Cir. 1981), and United States v. Pruitt, 458 F.3d 477 (6th Cir. 2006), was dicta and not controlling, and refusing to set a standard).

- 3) **Courts Rely Upon Various Factors to Indicate Presence Inside the Home.** "Courts 'must be sensitive to common sense factors indicating a resident's presence.'" Valdez, 172 F.3d at 1226... "Indeed, the officers may take into account the fact that a person involved in criminal activity may be attempting to conceal his whereabouts." Id. (citation omitted). In determining a suspect's presence in the

home, a law enforcement officer may consider the following factors:

- a) **Surveillance Indicating the Suspect is in the Residence.** However, "direct surveillance or the actual viewing of the suspect on the premises is not required." *Id.* (citing *Magluta*, 44 F.3d at 1535, 1538);
- b) **The Presence of the Suspect's Automobile,** which may indicate his presence, *Valdez*, 172 F.3d at 1226 (citation omitted); *United States v. Bervaldi*, 226 F.3d 1256, 1264 (11th Cir. 2000) (Presence of suspect's automobile was an important fact in establishing his presence in home);
- c) **The Time of Day,** *United States v. Terry*, 702 F.2d 299, 319 (2d Cir.), *cert. denied*, 461 U.S. 931 (1983) (reasonable to believe suspect would be at home at 8:45 a.m. on Sunday morning);
- d) **Observing the Operation of Lights or Other Electrical Devices,** *Route*, 104 F.3d at 63 (officers heard television set left on inside residence after third person left residence); *Magluta*, 44 F.3d at 1538 (observations that "the lawn was manicured and a porch light was on" gave "no indication that Magluta departed, such as for work or the like");
- e) **The Circumstances of a Suspect's Employment,** *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995)(officer's conduct reasonable since they knew the suspect "was unemployed and typically slept late");
- f) **Tips From Citizens,** *United States v. Boyd*, 180 F.3d 967, 978 (8th Cir. 1999)(Officer reasonably believed that suspect was home based on confidential informant's assertion, corroborated by police observation of a car appearing to be the defendant's and observing that the hood of defendant's girlfriend's car was warm, that defendant had arrived there);
- g) **A Lack of Evidence That the Suspect is Elsewhere,** *see Terry*, 702 F.2d at 319 (one factor in supporting reasonableness was

twelve-year-old son's failure to indicate father was not inside).

"No single factor is, of course, dispositive. Rather, the court must look at all of the circumstances present in the case to determine whether the officers entering the residence had a reasonable belief that the suspect resided there and would be found within." Valdez, 172 F.3d at 1226. See, e.g., United States v. Smith, 363 F.3d 811, 814-15 (8th Cir. 2004), *vacated on other grounds and remanded for resentencing by Smith v. United States*, 543 U.S. 1103 (2005), (Totality of the circumstances supported reasonable belief suspect was in home where (a) towel covering window moved; (b) baby was crying inside the apartment; (c) suspect was known to have been in the apartment during the morning hours on two earlier occasions; and (d) officers knew suspect usually did not answer the door after repeated knocking).

4. **To Arrest a Suspect in a Third Party's Residence, a Warrant, Consent, or Exigent Circumstances Must Exist.** In Steagald v. United States, 451 U.S. 204 (1981), the Supreme Court addressed "whether, under the Fourth Amendment, a law enforcement officer may legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant." Id. at 205. In sum, the Court held that a law enforcement officer could not enter the home of a third party to affect an arrest unless he has:

- a. **A Search Warrant;**
- b. **Exigent Circumstances; or**
- c. **Consent of the Third Party Homeowner.**

Id. While the arrest warrant may protect the arrestee from an unreasonable seizure, "it [does] absolutely nothing to protect [the homeowner's] privacy interest in being free from an unreasonable invasion and search of his home." Id. at 213. Similarly, though an arrest warrant necessarily allows for entry into the home of the person named in the warrant to affect an arrest, "this analysis ... is plainly inapplicable when the police seek to use an arrest warrant as legal authority to enter the home of a third party to conduct a search. Such a warrant embodies no judicial determination whatsoever regarding the person whose home is to be searched." Id. at 214. See also Minnesota v. Carter, 525 U.S. 83, 100 (1998) (Kennedy, J., concurring) ("Absent exigent circumstances or consent, the police cannot search for the subject of an arrest warrant in the home of a third party, without first obtaining a search

warrant directing entry”); [United States v. Lovelock](#), 170 F.3d 339, 344 (2d Cir.), *cert. denied*, 528 U.S. 853 (1999)(“The principle discussed in [Payton](#), allowing officers to enter the residence of the suspect named in the arrest warrant, does not authorize entry into a residence in which the officers do not believe the suspect is residing but believe he is merely visiting”).

NOTE: Of course, “[i]f the suspect is a co-resident of the third-party, then [Steagald](#) does not apply, and [Payton](#) allows both arrest of the subject of the arrest warrant and use of evidence found against the third party.” [United States v. Risse](#), 83 F.3d 212, 216 (8th Cir. 1996)(citations and internal quotation marks omitted).

J. EPO #10: IDENTIFY WHEN AN ARREST INVOLVING A MISDEMEANOR REQUIRES THE USE OF A WARRANT

1. **General Rule – A Law Enforcement Officer May Make A Warrantless Arrest in Public For a Misdemeanor Offense if the Crime was Committed “In the Officer’s Presence.”** “If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.” [Atwater v. City of Lago Vista](#), 532 U.S. 318, 354 (2001). This is consistent with the ancient common law rule that “a peace officer was permitted to arrest without a warrant for a misdemeanor ... committed in his presence....” [United States v. Watson](#), 423 U.S. 411, 418 (1976). See also [Carroll](#), 267 U.S. at 156-157 (“The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony, and that he may only arrest without a warrant one guilty of a misdemeanor if committed in his presence”).
2. **The Requirement the Offense Occur “In the Officer’s Presence.”** “The United States Constitution does not require a warrant for misdemeanors not occurring in the presence of the arresting officer.” [Fields v. South Houston](#), 922 F.2d 1183, 1189 (5th Cir. 1991). See also [Barry v. Fowler](#), 902 F.2d 770, 772 (9th Cir. 1990)(“The requirement that a misdemeanor must have occurred in the officer’s presence to justify a warrantless arrest is not grounded in the Fourth Amendment”). Further, “the Supreme Court has never held that a police officer violates the Fourth Amendment merely by arresting someone without a warrant for a misdemeanor offense which did not occur in the officer’s presence and/or did not involve a breach of the peace. Rather, when determining the constitutionality of a warrantless arrest for a criminal offense, the Court has repeatedly focused its inquiry on the

existence of probable cause for the arrest.” [Woods v. City of Chicago](#), 234 F.3d 979, 992 (7th Cir. 2000), cert. denied, 534 U.S. 955 (2001). Thus, even when a statutory violation has occurred (e.g., a violation of a state statute requiring “in the presence”), no Fourth Amendment violation will be found unless probable cause for the arrest did not exist. See, e.g., [Vargas-Badillo v. Diaz-Torres](#), 114 F.3d 3, 6 (1st Cir. 1997); [Pyles v. Raisor](#), 60 F.3d 1211, 1215 (6th Cir. 1995); [Scott v. District of Columbia](#), 101 F.3d 748, 754 (D.C. Cir. 1996), cert. denied, 520 U.S. 1231 (1997); [Fields](#), *supra*; [Barry](#), *supra*.

3. **Most Federal Statutory Arrest Authority Incorporates the “In the Presence” Requirement.** Nonetheless, the “in the presence” requirement has been incorporated into the vast majority of statutes providing federal law enforcement officers with arrest authority. See, e.g., [Title 18 U.S.C. § 3053](#) (U.S. Marshals Service); [Title 18 U.S.C. § 3056](#) (U.S. Secret Service); [Title 19 U.S.C. § 1589a](#) (U.S. Customs Service); [Title 26 U.S.C. § 7608](#) (Internal Revenue Service).
4. **What Does “In the Presence” Mean?** Generally speaking, an “officer has probable cause to believe a misdemeanor is taking place in his presence ‘when the facts and circumstances as observed by the officer through the officer’s senses are sufficient to warrant an officer of reasonable caution to believe that an offense is occurring.’” [Tanberg v. Sholtis](#), 401 F.3d 1151, 1157 (10th Cir. 2005)(citation omitted).
5. **Examples of “In the Presence.”** Because the “in the presence” limitation for misdemeanor offenses appears with some frequency, examples of what that phrase means are helpful.
 - a. **Officer is the Victim.** So, for example, where the officer making the arrest was the actual victim of the crime, such as an assault, the “in the presence” requirement is met. See, e.g., [Hoover v. Garfield Heights Municipal Court](#), 802 F.2d 168, 172 (6th Cir. 1986), cert. denied, 480 U.S. 949 (1987) (Where officer was assaulted, “the offense obviously was committed in the presence of a police officer and there was a reasonable ground for [the suspect’s] arrest”).
 - b. **Officer Establishes Probable Crime Offense Being Committed.** “The presence requirement ... allow[s] arrest where the facts confronting an officer give him probable cause to believe that the offense is being committed. An officer may draw reasonable inferences from the immediate observations of his senses.” [United States v. Miller](#), 589 F.2d 1117, 1128 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979).

6. **To Enter an Arrestee's Home to Make an Arrest, an Officer Must Have a Warrant, Consent, or Exigent Circumstances.** As with a felony offense, in order to enter a person's home to make an arrest, a law enforcement officer must have (1) a warrant; (2) consent; or (3) exigent circumstances. [Payton](#), 445 U.S. at 588, 589.

K. EPO #11: IDENTIFY THE CONDITIONS UNDER WHICH AN OFFICER MAY USE FORCE TO EXECUTE A WARRANT (SEARCH OR ARREST) ACCORDING TO THE PROVISIONS OF [TITLE 18 U.S.C. § 3109](#)

1. **General Rule - Before Entering a Dwelling to Serve Warrants, Officers Must Comply with [Title 18 U.S.C. § 3109](#).** "The Fourth Amendment says nothing specific about formalities in exercising a warrant's authorization, speaking to the manner of searching as well as to the legitimacy of searching at all simply in terms of the right to be 'secure ... against unreasonable searches and seizures.'" [United States v. Banks](#), 540 U.S. 31, 35 (2003). In terms of executing warrants in dwellings, [Title 18 U.S.C. § 3109](#) announces the Federal "knock and announce" rule. In sum, the statute provides that, "[p]olice acting under a warrant usually are required to announce their presence and purpose, including by knocking, before attempting forcible entry, unless circumstances exist which render such an announcement unreasonable." [United States v. Sargent](#), 319 F.3d 4, 8 (1st Cir. 2003). "Failure to knock and announce prior to forcibly entering a location to execute a search warrant, absent exigent circumstances, is unreasonable under the Fourth Amendment." [United States v. Smith](#), 386 F.3d 753, 758 (6th Cir. 2004). See also [Wilson v. Arkansas](#), 514 U.S. 927, 934 (1995). Of course, during the execution of search or arrest warrants, a law enforcement officer may obtain consent to gain entry into particular premises. However, where consent is not a viable option for law enforcement officers, forced entry may be required. In sum, there are two (2) situations in which a law enforcement officer may use force to gain entry to execute a search or arrest warrant:

- a. **[Title 18 U.S.C. § 3109](#) is the Federal "Knock and Announce" Statute.** [Title 18 U.S.C. § 3109](#) codified the common law "knock and announce" requirements, and requires that officers executing search or arrest warrants must, unless their entry is consented to, give notice of their authority and purpose and be refused entry before they can break into the premises to be searched.
- b. **Compliance with [§ 3109](#) May Be Excused When Exigent Circumstances Exist.** When exigent circumstances exist, compliance with the notice requirements of [§ 3109](#) may be

excused, and force may be used to enter a home. These exigent circumstances are "exceptions" to the [§ 3109](#).

2. **The Statute.** [Title 18 U.S.C. § 3109](#) is the Federal "knock and announce" statute. Titled "Breaking Doors or Windows for Entry or Exit," the statute provides as follows:

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

3. **Section 3109 Applies to Both Search and Arrest Warrants.**

While the plain language of the statute appears to limit its application to the execution of search warrants, [§ 3109](#) has been made applicable to the execution of arrest warrants by case law. See [Miller v. United States](#), 357 U.S. 301 (1958) ("The requirement stated in *Semayne's Case* still obtains. It is reflected in [Title 18 U.S.C. § 3109](#), in the statutes of a large number of States, and in the American Law Institute's proposed Code of Criminal Procedure, § 28. It applies, as the Government here concedes, whether the arrest is to be made by virtue of a warrant, or when officers are authorized to make an arrest for a felony without a warrant"); [United States v. Rivers](#), 1996 U.S. App. LEXIS 33678 (9th Cir. 1996) (In case involving arrest of defendant in his own home with an arrest warrant, court noted that "[section 3109](#) applies to the execution of arrest warrants as well as search warrants"); [United States v. Maden](#), 64 F.3d 1505 (10th Cir. 1995) (In case involving arrest of defendant in his apartment with an arrest warrant, court noted that "[section 3109](#) applies when officials attempt to enter a house to execute an arrest warrant"); [United States v. Nolan](#), 718 F.2d 589 (3rd Cir. 1983) (Holding that "[section 3109](#) has been interpreted to apply to breakings pursuant to arrest warrants as well as search warrants"); [United States v. Reyes](#), 922 F. Supp. 818 (S.D.N.Y. 1996) (Holding that "[section 3109](#) has been held to apply to arrest warrants," citing [Sabbath v. United States](#), 391 U.S. 585 (1968)]; [United States v. Gilbert](#), 829 F. Supp. 900 (E.D. Mich. 1993) (Holding that, "while [§ 3109](#) reads as if it only applies to search warrants, 'there is no doubt that this statute's requirements (although applicable in terms only to search warrants) apply to forcible entry to a home when officers seek to make an arrest of a person either on arrest warrant or on probable cause'"); [United States v. Reed](#), 810 F. Supp. 1078 (D. Alaska 1992) (Noting that "[18 U.S.C. § 3109](#) governs the service of search and, by extension, arrest warrants by federal agents"); and [United States v. Ross](#), 1995 U.S. App. LEXIS 9955 (6th Cir. 1995) (Holding that "the 'knock and announce' statute requires officers to announce their authority

and purpose and be refused admittance before breaking into a house to execute a search or arrest warrant").

4. **Section 3109 has Three Primary Purposes.** The requirement to "knock and announce" under [§ 3109](#) has three primary purposes:
 - a. **The reduction of the potential for violence to both the police officer and the occupants of the house into which entry is sought;**
 - b. **The needless destruction of private property;** and
 - c. **A recognition of the individual's right of privacy in his house.**

See [Smith](#), 386 F.3d at 758 ("The knock-and-announce rule: 1) reduces the potential for violence to both the police officers and the occupants of the house into which entry is sought; 2) curbs the needless destruction of private property; and 3) protects the individual's right to privacy in his or her house")(internal quotation marks and citation omitted); [United States v. Dunnock](#), 295 F.3d 431, 434 (4th Cir.), cert. denied, 537 U.S. 1037 (2002)(Noting "knock and announce" requirement "serves three purposes: (1) protecting the safety of occupants of a dwelling and the police by reducing violence; (2) preventing the destruction of property; and (3) protecting the privacy of occupants")(citation omitted); [United States v. Brown](#), 52 F.3d 415, 421 (2d Cir. 1995), cert. denied, 516 U.S. 1068 (1996).

5. **The Circuits are Split as to Whether § 3109 Applies to Buildings Other Than Dwellings.** There is currently a split among the circuits as to whether [§ 3109](#) applies only to dwellings. The majority of circuits hold that the requirements of the statute are inapplicable when a warrant is being served at a commercial premise. See, e.g., [United States v. Lopez](#), 898 F.2d 1505 (11th Cir. 1990)("Section 3109 applies only to a house and its curtilage, and does not apply to commercial buildings")(citation omitted); [United States v. Francis](#), 646 F.2d 251, 256 (6th Cir.), cert. denied, 454 U.S. 1082 (1981)("We continue to restrict the application of [§ 3109](#) to dwellings and buildings within the curtilage, the extent of the rule as it existed at common law"); [United States v. Agrusa](#), 541 F.2d 690, 700 (8th Cir. 1976), cert. denied, 429 U.S. 1045 (1977); [United States v. Johns](#), 466 F.2d 1364, 1365 (5th Cir. 1972). However, two circuits do require compliance with [§ 3109](#) at a commercial premise. [United States v. Case](#), 435 F.2d 766, 770 n.1 (7th Cir. 1970)("Although [§ 3109](#) literally applies only to 'houses,' it, like the Fourth Amendment itself which refers to houses, has been held to include commercial establishments"); [United States v. Phillips](#), 497 F.2d 1131, 1133-1134 (9th Cir. 1974).

6. **Officers are Not Required to “Knock and Announce” When No One is Home.** When law enforcement officers are aware that no one is present during the execution of a search or arrest warrant, they are not required to “knock and announce” prior to entry. See, e.g., [United States v. DeBuse](#), 289 F.3d 1072, 1075 (8th Cir. 2002)(Noting “the Fourth Amendment does not require notice to an absent homeowner before execution of a search for which a warrant has issued”); [United States v. Valencia-Roldan](#), 893 F.2d 1080, 1081 n.1 (9th Cir.), cert. denied, 495 U.S. 935 (1990); [United States v. De Lutis](#), 722 F.2d 902, 908 (1st Cir. 1983)(Expressing “serious doubt” as to whether absentee owner could raise a claim for violation of [§ 3109](#)). In essence, this is in keeping with the Supreme Court’s holding that “police are not required to comply with the knock and announce statute where doing so would be a “useless gesture.” [Miller v. United States](#), 357 U.S. 301, 310 (1958)(dictum).
7. **A “Breaking” Under § 3109 Does Not Always Require Force.** The Supreme Court has noted that, “although the phrase ‘break open’ implies some use of force, force is not an ‘indispensable element’ of a violation of [section 3109](#).” [United States v. Alejandro](#), 368 F.3d 130, 134 (2d Cir. 2004)(citation omitted). Further, the Court has “concluded that [section 3109](#) ‘basically’ prohibits ‘an unannounced intrusion into a dwelling,’ and listed as examples of such intrusions:
- a. **Officers breaking down a door;**
 - b. **Forcing open a chain lock on a partially open door;**
 - c. **Opening a locked door by use of a passkey;** or
 - d. **Opening a closed but unlocked door.”**
- [Id.](#) at 134 (citations omitted).
8. **The Exclusionary Rule is Inapplicable to Violations of 18 U.S.C. § 3109.** Violation of knock and announce requirements alone will not result in suppression of evidence seized during the execution of a search warrant. [Hudson v. Michigan](#), 547 U.S. 586 (2006); [United States v. Carvajal](#), 502 F.3d 54 (2nd Cir. 2007). While the knock and announce rule is a command of the Fourth Amendment, [id.](#) at 589, citing [Wilson v. Arkansas](#), 514 U.S. 927, 931-936 (1995), it has never protected “one’s interest in preventing the government from seeing or taking evidence described in a warrant.” [Id.](#) at 594. As the interests protected by the rule have nothing to do with the seizure of evidence, the [Hudson](#) court held that suppression is not an appropriate remedy for violation. Importantly, however, those who fail to comply with federal or state

knock and announce requirements remain exposed to civil liability and agency disciplinary action.

9. **Section 3109 has Three Basic Requirements.** Pursuant to [§ 3109](#), three requirements must be met before a law enforcement officer can use force to "break open" some part of a house when executing a search or arrest warrant.

NOTE: While the following requirements reflect the current state of the law, it should always be remember that, "the focus of the 'knock and announce' rule is properly not on what 'magic words' are spoken by the police, or whether the police rang the doorbell, but rather on how these words and other actions of the police will be perceived by the occupant." [United States v. Combs](#), 394 F.3d 739, 744 (9th Cir. 2005) (citation omitted). "The proper trigger point, therefore, is when those inside should have been alerted that the police wanted entry to execute a warrant." [United States v. Spikes](#), 158 F.3d 913, 925 (6th Cir. 1998), *cert. denied*, 525 U.S. 1086 (1999).

- a. **An Officer Must First "Knock."** "Although the principle is commonly referred to as 'knock and announce,' the Court's holding in [Wilson](#) requires only an announcement. Similarly the federal statute ... imposes only the requirement that the officer give 'notice of his authority and purpose.'" [United States v. Smith](#), 63 F.3d 956, 962 (10th Cir. 1995), *vacated and remanded for resentencing by Smith v. United States*, 516 U.S. 1105 (2005). Nevertheless, "[t]he general practice of physically knocking on the door ... is the preferred method of entry." [Combs](#), 394 F.3d at 794. Thus, the first requirement is that a law enforcement officer first "knock." This essentially requires that a law enforcement officer give notice of his or her presence in some fashion, such as:

- 1) **Physically Knocking on the Door Satisfies This Requirement.** See, e.g., [United States v. Spriggs](#), 996 F.2d 320 (D.C. Cir.), *cert. denied*, 510 U.S. 938 (1993)(Agents complied with [§ 3109](#) where "they knocked once on the door and announced 'Police, search warrant' in slightly above normal tone of voice").
- 2) **Placing a Phone Call to the Home Satisfies This Requirement.** See [United States v. Cueto](#), 611 F.2d 1056, 1062 (5th Cir. 1980)(Agents "complied with both the letter and spirit of [section 3109](#)" where, *inter alia*, "agents surrounded the hotel room, one agent telephoned its occupants, identified himself, and

asked the occupants to come outside”).

- 3) **Utilizing a Bullhorn Satisfies This Requirement.** See, e.g., [United States v. James](#), 528 F.2d 999, 1017 (5th Cir.), reh’g denied, 532 F.2d 1054 (1976) and cert. denied, 429 U.S. 959 (1976), reh’g denied, 429 U.S. 1055 (1977)(“The announcement by the FBI Agents over the bullhorn of the authority and purposes of the officers present, while standing in plain view in daylight at the RNA premises, which was repeated the second time, fully satisfied the requirements of [18 U.S.C. § 3109](#)”); [Spikes](#), 158 F.3d at 927 (Use of bullhorn caused neighbors to exit homes to watch execution of warrant, prompting court to note: “When the execution of a warrant becomes a spectator sport, common sense dictates that the ‘knock and announce’ rule has been complied with”).
- 4) **Utilizing a Loudspeaker Satisfies the Requirement.** See [Combs](#), 394 F.3d at 746.

- b. **An Officer Must Also Announce His Identity and Authority.** Second, a law enforcement officer must announce his or her identity and authority. See, e.g., [Miller v. United States](#), 357 U.S. 301, 309-10 (1958); [United States v. Manning](#), 448 F.2d 992, 1001-02 (2d Cir.) (en banc), cert. denied, 404 U.S. 995 (1971); [United States v. Leon](#), 487 F.2d 389, 394 (9th Cir. 1973), cert. denied, 417 U.S. 933 (1974); [United States v. Wyson](#), 528 F.2d 345, 348 (9th Cir. 1976); [United States v. Wylie](#), 462 F.2d 1178, 1188 (D.C. Cir. 1972).
- c. **Before Force Can Be Used to Enter, an Officer Must be Refused or Denied Admittance.** Third, a law enforcement officer must be refused or denied admittance. “It is well established that the phrase ‘refused admittance’ is not restricted to an affirmative refusal, but encompasses circumstances that constitute constructive or reasonably inferred refusal.” [United States v. Bonner](#), 874 F.2d 822, 824 (D.C. Cir. 1989)(citations omitted). A refusal of admittance can take a variety of forms.
 - 1) **Silence Can Be Construed as Refusal of Entry.** An affirmative refusal of entry is not required by [§ 3109](#). Instead, refusal may be implied in some instances. For example, “[a] refusal to comply with an officer’s order to ‘open up’ can be inferred from silence,” [United States v. Granville](#), 222 F.3d 1214, 1218 (9th Cir. 2000)(citation omitted). However, this is only true

in situations where a reasonable period of time has passed. Thus, after a reasonable period of time, silence may be construed as constructive refusal of admittance.

- a) **What Constitutes a “Reasonable Period of Time” is Determined By the Totality of the Circumstances.** Unfortunately, “no case from the Supreme Court ... has yet specifically addressed how long officers must wait before entering a residence after knocking and announcing their presence.” [United States v. Jones](#), 133 F.3d 358, 361 (5th Cir.), cert. denied, 523 U.S. 1144 (1998).

- (1) **“Reasonableness” is Fact Intensive.** Instead, rulings on what constitutes a “reasonable” amount of time are “highly contextual, turning on factors that indicate whether the amount of time given was enough for the defendant to ascertain who was at the door and to respond, and whether officers' safety was at risk.” [Sargent](#), 319 F.3d at 11 (citations omitted). See also [United States v. Vesey](#), 338 F.3d 913, 915 (8th Cir. 2003)(Noting “whether police officers have waited long enough after knocking to infer that they have been constructively denied admittance, and thus may enter, ‘does not turn on any hard and fast time limit, but depends upon the circumstances confronting the officer serving the warrant’”)(citation omitted).

- (2) **Facts Known to the Officer Are What’s Important in Determining Reasonableness.** “The facts known to the police are what count in judging reasonable waiting time[s]” for purposes of [§ 3109](#). [Banks](#), 540 U.S. at 527.

- b) **Factors to Consider in Determining Whether Officers Waited a Reasonable Period of Time.** Generally speaking, “[t]he amount of time officers need to wait before entering a home necessarily depends on how much time it would take for a person in the

house to open the door.” [Spikes](#), 158 F.3d at 927. Factors that courts have considered in making this determination include, but are not limited to, the following:

- (1) **The Time of Day.** “When the police execute a warrant in the dead of night or have some other reason to believe that a prompt response from the homeowner would be unlikely, the length of time the officers should wait increases.” [Spikes](#), 158 F.3d at 927. “Correspondingly, when officers execute a warrant in the middle of the day ... the length of time the officers must tarry outside diminishes.” [Id.](#) See also [Vesey](#), 338 F.3d at 916 (Entry was reasonable based in part on the fact that the officers “arrived in the afternoon, when it was likely that any occupants were awake”); [United States v. Chavez-Miranda](#), 306 F.3d 973, 980 (9th Cir. 2002), [cert. denied](#), 537 U.S. 1217 (2003) (Noting that, in evaluating reasonableness, courts should consider, among other factors, “the time of day” the warrant was executed); [United States v. Gallegos](#), 314 F.3d 456, 460 (10th Cir. 2003) (“We have held that when a warrant is executed in the middle of the day, ‘the amount of time the officers need to wait before entering is generally reduced’”).
- (2) **The Size and Physical Layout of the Residence.** The size and physical layout of the residence is also a factor that must be considered in determining the reasonableness of an entry. So, while a larger residence might require greater amount of time, a smaller residence would require a lesser amount. See, e.g., [Vesey](#), 338 F.3d at 916 (Entry reasonable based in part on the “size of the apartment,” which the court classified as “small”); [Gallegos](#), 314 F.3d at 461 (Noting “the physical characteristics of the [suspect’s]

residence are relevant to our determination"); [Chavez-Miranda](#), 306 F.3d at 980 (Same).

- (3) **The Nature of the Crime.** The nature of the crime under investigation may be considered in determining the reasonableness of an entry. This is especially true in cases involving drugs. See, e.g., [United States v. One Parcel of Real Property](#), 873 F.2d 7, 9 (1st Cir.), cert. denied sub nom. [Latraverse v. United States](#), 493 U.S. 891 (1989) ("The fact that the officers had probable cause to believe that the occupants possessed cocaine, a substance that is easily and quickly removed down a toilet, is additional justification for the shorter wait before entry"); [Vesey](#), 338 F.3d at 915 (Noting "the suspected presence of drugs in the place to be searched has been held to lessen the time that police officers are required to wait"); [Spikes](#), 158 F.3d at 926 (Noting "the presence of drugs in the place to be searched, while not a conclusive factor, lessens the length of time law enforcement must ordinarily wait outside before entering a residence").
- (4) **Any Evidence Demonstrating Guilt.** Evidence demonstrating guilt is a factor that may be considered in determining the reasonableness of an entry. See [Chavez-Miranda](#), 306 F.3d at 980; [Doran v. Eckhold](#), 409 F.3d 958, 965-67 (8th Cir. 2005) (evidence of drug distribution found in garbage).
- (5) **Other Observations Supporting a Forced Entry.** Other observations supported forced entry may be considered, including, for example, defensive measures taken by the residents of the premises. See, e.g., [Spikes](#), 158 F.3d at 926 (Where suspects took defensive measures,

such as “the use of police scanning equipment, the placement of lookouts in various strategic places within the home, and, most importantly, the presence of guns and armed guards,” the officers “did not need to wait long enough for a barrage of bullets from within before concluding that they had given the occupants enough time to respond to their request for entry”).

- c) **Numerous Cases Have Considered What a “Reasonable Period of Time” is for Purposes of § 3109.** While there is no “bright line” standard for what a “reasonable” period of time is before entering, numerous circuits have addressed the issue. The following selection of cases is taken directly from [Jones](#), *supra*.

- (1) **Five Seconds of Silence or Less Generally Found to Violate § 3109.** “Generally, a delay of five-seconds or less after knocking and announcing has been held a violation of § 3109.” [Jones](#), 133 F.3d at 361. See, e.g., [United States v. Moore](#), 91 F.3d 96, 98 (10th Cir. 1996)(Officers waited 3 seconds at most and the Government failed even to allege that the officers harbored a concern for their safety); [United States v. Lucht](#), 18 F.3d 541, 550-51 (8th Cir. 1994) (Waiting 3 to 5 seconds before entering was not long enough); [United States v. Rodriguez](#), 663 F. Supp. 585, 587-88 (D.D.C. 1987)(Delay of 3 to 5 seconds was insufficient); [United States v. Marts](#), 986 F.2d 1216, 1217-18 (8th Cir. 1993) (Lapse of less than 5 seconds held not sufficient to infer refusal of admittance necessary to comply with § 3109); [United States v. Nabors](#), 901 F.2d 1351, 1355 (6th Cir. 1990) (Forced entry only seconds after announcing the officers' authority and purpose must be “carefully scrutinized”); [United States v. Mendonsa](#), 989 F.2d 366, 370 (9th Cir. 1993)(Waiting 3 to 5 seconds was

insufficient).

- (2) **Five Seconds or More of Silence Generally Found to Satisfy § 3109.** “However, when officers have waited more than 5 seconds, the courts have generally held that there was no violation of [§ 3109](#).” [Jones](#), 133 F.3d at 361. See, e.g., [Vesey](#), 338 F.3d at 916 (“Given the size of the apartment, the time of day, the lack of any verbal response, and the suspected presence of drugs, we conclude that ten seconds was a reasonable period for the police to wait before their forced entry”); [United States v. Markling](#), 7 F.3d 1309, 1318 (7th Cir. 1993)(Officers waited 7 seconds before starting to try to knock the door down); [United States v. Spriggs](#), 996 F.2d 320, 322-23 (D.C. Cir.), cert. denied, 510 U.S. 938 (1993) (Officers waited 15 seconds before attempting to enter); [United States v. Ramos](#), 923 F.2d 1346, 1355-56 (9th Cir. 1991) *rev’d on other grounds and remanded by United States v. Ruiz*, 257 F.3d 1030 (9th Cir. 2001) (After two requests and 45 seconds); [United States v. Myers](#), 106 F.3d 936, 940 (10th Cir.), cert. denied, 520 U.S. 1270 (1997) (Agents waited 10 seconds before battering the door down); [United States v. Knapp](#), 1 F.3d 1026, 1030-31 (10th Cir. 1993)(10 to 12 seconds was sufficient to wait); [United States v. Gatewood](#), 60 F.3d 248, 250 (6th Cir. 1995)(No violation when officers waited about 10 seconds between announcement and entry).

- 2) **Sounds of Flight by the Occupants May Be Construed as Refusal of Admittance.** The sounds of flight by the occupants of the residence can be construed as refusal or denial of admittance. See, e.g., [United States v. Gillaum](#), 372 F.3d 848, 855 (7th Cir. 2004)(Holding “the sound of footsteps coming from inside the apartment and not moving closer to the entry door was sufficient for [the officer] to order.

the forcible entry and disregard the knock and announce requirement”); [United States v. Stiver](#), 9 F.3d 298, 302 (3rd Cir. 1993), cert. denied, 510 U.S. 1136 (1994)(“When [the officers] announced their presence, they heard heavy and hurried footsteps leading away from the door. Under these circumstances, the officers did not violate the common law rule by entering without waiting for someone to open the door”); [Bonner](#), 874 F.2d at 826 (Refusal of admittance inferred because, *inter alia*, officers “heard footsteps running from the door”); [United States v. Pennington](#), 328 F.3d 215, 221 (6th Cir. 2003)(Sounds of flight from inside the residence “would indicate to a reasonable police officer that the request for entry was being effectively denied, that the person inside the home was taking some type of evasive action, including the possible destruction of contraband, and that the person inside the home was aware that police were seeking entry to his home”).

- 3) **Sounds of Evidence Being Destroyed May Be Construed as Refusal of Admittance.** Refusal or denial of admittance can also be inferred from the sounds of evidence being destroyed. *See, e.g.,* [Masiello v. United States](#), 317 F.2d 121 (D.C. Cir. 1963)(Commotion heard through the door qualified as refusal of admittance because it meant “the occupants were very likely engaged in what might be called ‘standard emergency procedure’ of destroying the evidence”); [United States v. Anderson](#), 39 F.3d 331, 346 (D.C. Cir. 1994), rev’d on other grounds, 59 F.3d 1323 (D.C. Cir. 1995)(en banc)(Refusal of admittance where “the police heard noises consistent with the destruction of evidence emanating from within the apartment, and ... the persons inside made no effort to respond to the officers’ knock”).
- 4) **Verbal Refusal May Be Construed as Refusal of Admittance.** A refusal of admittance may be expressly made, such as when the occupant of a residence yells for a law enforcement officer to “go away.”. However “[t]he phrase ‘refused admittance’ is not restricted to an affirmative refusal. Rarely if ever is there an affirmative refusal. More often the officers meet with silence as the occupants seek to destroy evidence or escape. Accordingly, whether the failure to respond to an officer’s knock constitutes refused admittance is a question of the circumstances.”

[United States v. Ortiz](#), 445 F.2d 1100, 1102 n.2 (10th Cir.), cert. denied, 404 U.S. 993 (1971)(internal citations omitted).

- 5) **Gunfire From Inside the Residence May Be Construed as Refusal of Admittance.** Finally, refusal of admittance may be inferred from a suspect's discharge of a firearm upon receiving notice of a law enforcement officer's purpose and authority.

10. **When Exigent Circumstances Exist, a Law Enforcement Officer May Dispense With the Requirements of § 3109.** "The Fourth Amendment does not forbid no-knock searches. Rather, it requires that searching officers justify dispensing with the knock-and-announce requirement." [United States v. Scroggins](#), 361 F.3d 1075, 1081 (8th Cir. 2004). Thus, law enforcement officers may also use force to enter a residence when exigent circumstances exist. See [Banks](#), 540 U.S. at 43 (Noting "that § 3109 is subject to an exigent circumstances exception ... which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place")(internal citation omitted). In such cases, the officers may dispense with the notice and authority requirements of § 3109. See, e.g., [United States v. Hatfield](#), 365 F.3d 332, 339 (4th Cir. 2004)(Noting that, while Supreme Court cases have established that "any forcible entry into a dwelling must be preceded by both a knock and notice of identity and authority," there are exceptions to the rule that "occur when government agents encounter circumstances that present a threat of physical violence and when evidence may be destroyed if agents announce their presence"); [United States v. Grogins](#), 163 F.3d 795, 797 (4th Cir. 1998)(Noting that the "knock-and-announce requirement may be excused by exigent circumstances").

- a. **A Law Enforcement Officer Must Have Reasonable Suspicion That Exigent Circumstances Exist.** In order to use force to enter a residence without complying with the "knock and announce" requirements of § 3109, law enforcement officers "must have more than a mere hunch or suspicion before an exigency can excuse the necessity for knocking and announcing their presence." [United States v. Bates](#), 84 F.3d 790, 695 (6th Cir. 1996). Instead, the officers "must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." [Richards v. Wisconsin](#), 520 U.S. 385, 394 (1997).
- b. **There are Five Common Exigencies (Exceptions to §**

[3109](#)). The primary exigent circumstances that allow officers to disregard [§ 3109](#) are:

- 1) **Danger to Officers or Third Parties May Excuse Compliance With § 3109.** Where reasonable suspicion exists to believe that "knocking and announcing" could result in danger to law enforcement officers or third parties, the requirements of [§ 3109](#) may be excused. See, e.g., [Richards](#), 520 U.S. at 394; [Smith](#), 386 F.3d at 759 (Exigent circumstances that may excuse compliance with knock and announce rule include those where "the officers have a justified belief that someone within is in imminent peril of bodily harm"); [Brown](#), 52 F.3d at 424 ("Exigent circumstances will excuse non-compliance with the knock and announce requirement when the officers, 'after considering the particular facts regarding the premises to be searched and the circumstances surrounding the execution of the warrant,' reasonably believe there is an urgent need to force entry The need to force entry may result from danger to the safety of the entering officers or from the imminent destruction of evidence"); [United States v. Peterson](#), 353 F.3d 1045, 1049-50 (9th Cir. 2003)(Where police reasonably believed residence contained explosives, defendant had claimed readiness to "blow some shit up ... at any time," and defendant was known to carry a concealed weapon illegally, exigent circumstances justified entry); [United States v. Murphy](#), 69 F.3d 237, 243 (8th Cir. 1995), cert. denied, 516 U.S. 1153 (1996)("In Murphy's case, besides fearing for their own safety, officers also feared for the safety of innocent citizens in the neighborhood"); [United States v. Gambrell](#), 178 F.3d 927, 929 (7th Cir.), cert. denied, 528 U.S. 920 (1999)("The information Agent Eckerty learned from his informant - that Cookie regularly sold drugs out of her apartment; that she answered the door wearing a .25 caliber gun in her front pocket; that she and her roommate regularly carried guns in the apartment; that, in addition to the gun strapped on Cookie, there were other guns, drugs, and drug paraphernalia in the apartment--was enough to create a reasonable suspicion that an announced entry would have subjected the officers to a substantial risk of harm"); [Sargent](#), 319 F.3d at 12 ("In order to justify entry without knocking on the basis of concern for officers'

safety, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous”)(citation and internal quotation marks omitted).

- 2) **A Suspect’s Significant Criminal History May Be Considered In Determining Whether Compliance With § 3109 is Required.** “On occasion, a suspect’s significant criminal history of violence may provide the necessary additional specific information justifying a no-knock entry.” [United States v. Musa](#), 401 F.3d 1208, 1213 (10th Cir. 2005)(Upholding “no-knock” entry in part because of the defendant’s extensive criminal history, which included convictions for felony auto theft, marijuana possession, and being a felon-in-possession of a firearm, as well as five other arrests: (1) for domestic battery, obstruction, and terroristic threat; (2) for domestic battery, obstruction, possession of drug paraphernalia, and battery on a law-enforcement officer; (3) for domestic battery and unlawful restraint; (4) for domestic battery; and (5) for possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, and traffic violations).
- 3) **Destruction of Evidence May Excuse Compliance With § 3109.** Where reasonable suspicion exists that knocking and announcing would result in the destruction of evidence, the requirements of [§ 3109](#) may be excused. See, e.g., [Richards](#), 520 U.S. at 394 (Notice may be excused where to do so would allow “the destruction of evidence”); [Smith](#), 386 F.3d at 759 (Exigent circumstances that may excuse compliance with knock and announce rule include those where “the officers have a justified belief that those within are aware of their presence and are engaged in escape or the destruction of evidence”); [Peterson](#), 353 F.3d at 1050 (“Once the occupants knew police were outside, the suspected presence of drugs - the quintessential disposable contraband - provided yet another justification for the no-knock entry”); [Brown](#), 52 F.3d at 424 (“The need to force entry may result ... from the imminent destruction of evidence”).
- 4) **Compliance With § 3109 May Be Excused Where Knocking and Announcing Would Be a “Useless**

Gesture. Where “knocking and announcing” would be a “useless gesture,” as when the suspect is aware of a law enforcement presence, the requirements of § 3109 may be excused. See, e.g., [Richards supra](#) at 396 (Entry without notice allowed, in part, because of “petitioner’s apparent recognition of the officers”); [Miller v. United States](#), 357 U.S. 301, 310 (1958) (dictum)(“It may be that, without an express announcement of purpose, the facts known to officers would justify them in being virtually certain that the petitioner already knows their purpose so that an announcement would be a useless gesture”); [Smith](#), 386 F.3d at 759 (Exigent circumstances that may excuse compliance with knock and announce rule include those where “the persons within the residence already know of the officers’ authority and purpose”); [Peterson](#), 353 F.3d at 1049 (Knocking and announcing would have been futile where “just as this announcement was about to be made, [the defendant] unexpectedly opened the door, saw that police were outside, and attempted to deny them entry”; as noted by the court: “Just as one cannot close a door that is already closed, one cannot ‘announce’ a presence that is already known”); [United States v. Tracy](#), 835 F.2d 1267, 1270 (8th Cir.), cert. denied, 486 U.S. 1014 (1988) (“Announcement of purpose is excused when it constitutes a useless gesture because the “facts known to [the] officers justify them in being virtually certain the [persons to be apprehended] already know their purpose”) (citation omitted).

- 5) **A Law Enforcement Officer May Also Utilize a Ruse to Avoid Implicating § 3109.** “It is well-established that ‘in the detection of many types of crime, the Government is entitled to use decoys and conceal the identity of its agents.’” [Alejandro](#), 368 F.3d at 136-37 (citation omitted). For that reason, “[a]n entry obtained without force by ruse or deception is not a violation of [section 3109.](#)” [United States v. Defeis](#), 530 F.2d 14, 15 (5th Cir.), cert. denied, 429 U.S. 830 (1976). See also [Alejandro](#), 368 F.3d at 137 (Officer’s announcement that there was a gas leak in the apartment and that he (the officer) was with the gas company was a permissible ruse); [Linbrugger v. Abercia](#), 363 F.3d 537, 541 (5th Cir. 2004)(“As long as police officers do not use force, they may attempt to gain entry to a dwelling by deception”)[citing [Lewis](#)

[v. United States](#), 385 U.S. 206, 211-12 (1966)]; [United States v. Contreras-Ceballos](#), 999 F.2d 432, 435 (9th Cir. 1993)(“A law enforcement officer’s use of a ruse to gain admittance does not implicate [section 3109](#) because it entails no breaking”); and [United States v. Raines](#), 536 F.2d 796, 800 (8th Cir.), *cert. denied*, 429 U.S. 925 (1976) (“A police entry into a private home by invitation without force, though the invitation be obtained by ruse, is not a breaking and does not invoke the common law requirement of prior announcement of authority and purpose, codified in [§ 3109](#)”).

NOTE: It should be remembered that, if an attempted entry by ruse fails, “the knock-and-announce rule continues to apply to a later forcible entry.” [Linbrugger](#), 363 F.3d at 542. See, e.g., [Richards](#), 520 U.S. at 388 (Finding that, after a failed entry by deception, the officers’ noncompliance with the knock-and-announce requirement was reasonable).

- 6) **When a Law Enforcement Officer is in “Hot Pursuit,” Compliance With [§ 3109](#) May Be Excused.** Law enforcement officers who are in “hot pursuit” of a suspect need not pause at the front door of a residence in order to “knock and announce” their presence. See, e.g., [United States v. Flores](#), 540 F.2d 432, 435 (9th Cir. 1976)(“Entry in ‘hot pursuit’ has always been considered an exception to the knock and announce provisions of this section”) (citations omitted).
11. **Use of Force to Enter a Residence is Permissible Once the Requirements of [§ 3109](#) Have Been Fulfilled or Exigent Circumstances Exist.** Once the requirements of [§ 3109](#) have been fulfilled, or exigent circumstances exist, a law enforcement officer may use force to “break open” a door or window to the residence. In its most basic form, “entry without consent ordinarily amounts to ‘breaking’ under [Title 18 U.S.C. § 3109](#).” [United States v. Harris](#), 435 F.2d 74, 82 (D.C. Cir. 1970), *cert. denied*, 402 U.S. 986 (1971). This includes situations where “officers break down a door, force open a chain lock on a partially open door, open a locked door by use of a passkey, or ... open a closed but unlocked door.” [Sabbath v. United States](#), 391 U.S. 585, 590 (1968).
- a. **The Statute Does Not Apply When the Door is Already Open.** Numerous courts have found that “the statute does not apply to officers who enter through open doors.” [United](#)

[States v. Phillips](#), 149 F.3d 1026, 1029 (9th Cir. 1998), cert. denied, 526 U.S. 1052 (1999). *See also* [United States v. Mendoza](#), 281 F.3d 712, 717 (8th Cir.), cert. denied, 537 U.S. 1004 (2002) (“Most circuits courts deciding the issue have concluded when the door is open, the rule is vitiated”); [United States v. Kemp](#), 12 F.3d 1140 (D.C. Cir. 1994); [United States v. Remigio](#), 767 F.2d 730 (10th Cir.), cert. denied, 474 U.S. 1009 (1985).

- b. **The Statute Does Not Apply When the Knocking Opened the Door.** Similarly, the statute will not apply when a knock on a door causes the door to open, so long as the knock is done with "ordinary" force. *See* [Kemp](#), 12 F.3d at 1141 (“There is no 'breaking' at least where (1) the officer used only the force ordinarily used to knock upon, not to knock down, a door; and (2) an occupant is made aware of the officer's presence and purpose before the officers enters the premises”).

- 12. **Law Enforcement Officers May seek "No-Knock" Warrants.** In the right circumstances, a law enforcement officer may request a “no-knock” warrant, which allows them to dispense with the requirements to knock and announce before entry.

- a. **What Are “No-Knock” Warrants?** In sum, “[w]hen the police obtain a no-knock warrant, they have anticipated exigent circumstances before searching, and have asked for pre-search judicial approval to enter without knocking.” [Scroggins](#), 361 F.3d at 1081.
- b. **The Benefits of “No-Knock” Warrants.** “The issuance of a warrant with a no knock provision potentially insulates the police against the subsequent finding that exigent circumstances, as defined in [Richards](#), did not exist.” [United States v. Tisdale](#), 195 F.3d 70, 72 (2d Cir. 1999). *See also* [Scroggins](#), 361 F.3d at 1082 (“Although the standards are the same regardless of whether the police visit a judge before or after they search, if they do so beforehand, and the judge is wrong, the police can rely upon the [Leon](#) good-faith exception”).
- c. **No-Knock Warrants v. Exigent Circumstances.** “The showing the police must make to obtain a no-knock warrant is the same showing they must make to justify their own decision to dispense with the knock-and-announce requirement. Only the timing differs.” [Scroggins](#), 361 F.3d at 1082. *See also* [Banks](#), 540 U.S. at 36 (“When a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or

will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a 'no-knock' entry").

- d. **Disapproval of a Request For a "No-Knock" Warrant Does Not Always Preclude a "No-Knock" Entry.** A judicial officer's decision not to authorize a no-knock entry does not preclude officers, when executing a warrant, from concluding that it would be reasonable to enter without knocking and announcing. As the Supreme Court has noted: "The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time. But ... a magistrate's decision not to authorize a no-knock entry should not be interpreted to remove the officers' authority to exercise independent judgment concerning the wisdom of a no-knock entry at the time the warrant is being executed." [Richards](#), 520 U.S. at 396 n.7.
- e. **The Supreme Court Has Endorsed the Issuance of "No-Knock Warrants."** "The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time." [Richards](#), 520 U.S. 396 n.7. According to the Department of Justice Office of Legal Counsel, "officers need not take affirmative steps to make an independent re-verification of the circumstances already recognized by a magistrate in issuing a no-knock warrant, [but] such a warrant does not entitle officers to disregard reliable information clearly negating the existence of exigent circumstances when they actually receive such information before execution of the warrant." Thus, "when agents have reason to believe that knocking and announcing their presence would allow the destruction of evidence, would be dangerous, or would be futile, agents should request that the magistrate judge issue a no-knock warrant." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, DOJ, at 75 (March 2001).

L. **EPO #12: IDENTIFY THOSE OFFICIALS WHO HAVE THE AUTHORITY TO ISSUE FEDERAL SEARCH WARRANTS**

- 1. **General Rule – Rule 41 and Rule 1 of the Federal Rules of Criminal Procedure Dictate Who May Issue a Federal Search Warrant.** The rules regarding who may issue Federal search

warrants are contained in [Rule 41](#) and [Rule 1](#) of the Federal Rules of Criminal Procedure.

2. **Who May Issue Federal Search Warrants?**

- a. **United States Magistrate Judge** – [Rule 41\(b\)](#)
- b. **United States District Court Judge** – [Rule 1\(c\)](#) (Providing that, “when the[] rules authorize a magistrate judge to act, any other federal judge may also act”).
- c. **United States Circuit Court of Appeal Judge** – [Rule 1\(c\)](#)
- d. **United States Supreme Court Justice** – [Rule 1\(c\)](#)
- e. **State Court Judge of a Court of Record** – [Rule 41\(b\)](#).
“State judges were included in [Rule 41](#) because they are far more plentiful than the small corps of federal magistrates.” [United States v. Burke](#), 517 F.2d 377, 382 (2d Cir. 1975).

3. **State Judges Whom Issue Federal Search Warrants Must Be of a Court of Record.** Questions often arise as to whether a state court judge is a “court of record” as required by [Rule 41\(b\)](#). “Under [\[Rule 41\(b\)\]](#), whether an individual is a judge of a state court of record is governed by state law.” [United States v. Martinez-Zayas](#), 857 F.2d 122, 135 (3rd Cir. 1988). However, “it is generally accepted that the one essential feature necessary to constitute a court of record is that a permanent record of the proceedings of the court must be made and kept.” [DeKalb County v. Deason](#), 144 S.E.2d 446, 447 (Ga. 1965).

4. **There are also Jurisdictional Requirements for the Issuance of Federal Search Warrants.** Various statutory provisions provide jurisdictional limits on the issuance of Federal search warrants.

- a. **Rule 41 Provides Some Jurisdictional Requirements for the Issuance of Federal Search Warrants.** Pursuant to [Rule 41\(b\)](#), jurisdictional requirements exist in the issuance of Federal search warrants.
 - 1) **Within the District.** Federal search warrants may be issued by federal judges, or a judge from a state court of record, “to search for and seize a person or property located within the district.” [Rule 41\(b\)\(1\)](#).
 - 2) **Outside the District.** “[A] magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed.” [Rule 41\(b\)\(2\)](#).

- 3) **Terrorism Investigations.** “[A] magistrate judge - in an investigation of domestic terrorism or international terrorism - having authority in any district in which activities related to the terrorism may have occurred, may issue a warrant for a person or property within or outside that district.” [Rule 41\(b\)\(3\)](#).
- 4) **Tracking Devices.** “[A] magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both.” Rule 41(b)(4).
- b. **Title 18 U.S.C. § 2703(a) and (b) Allow Judges With Jurisdiction Over the Offense to Issue Nationwide Search Warrants for Stored Wire or Electronic Communications.** Pursuant to [Title 18 U.S.C. § 2703\(a\)](#) and (b), law enforcement officers may obtain Federal search warrants for the contents of wire or electronic communications held in storage by either an electronic communications service or remote computing service from “a court with jurisdiction over the offense under investigation.” In sum, this means that a law enforcement officer may obtain a Federal search warrant from a Federal judge who has jurisdiction over the offense in question, although not necessarily the place or item to be searched. For example, this provision would allow a law enforcement officer to obtain a search warrant from a Magistrate Judge in the Southern District of Georgia for electronic files stored on the server of an Internet Service Provider in California.
5. **Magistrate Judges Who Issue Warrants are Required to be “Neutral and Detached.”** “The primary reason for the warrant requirement is to interpose a ‘neutral and detached magistrate’ between the citizen and ‘the officer engaged in the often competitive enterprise of ferreting out crime.’” [United States v. Karo](#), 468 U.S. 705, 717 (1984)(emphasis added)(citation omitted). See also [Thompson v. Louisiana](#), 469 U.S. 17, 20 (1984)(“We have consistently reaffirmed our understanding that in all cases outside the exceptions to the warrant requirement the Fourth Amendment requires the interposition of a neutral and detached magistrate between the police and the ‘persons, houses, papers, and effects’ of citizens”). For that reason, the judge who issues the search warrant must be “neutral and detached.” See, e.g., [Shadwick v. Tampa](#), 407 U.S. 345, 350 (1972)(“An issuing magistrate must meet two tests. He must be neutral and detached, and he must be capable of determining whether probable cause exists for the

requested arrest or search”).

- a. **Judge Who Issued Warrant and Participated in Search Not Neutral and Detached.** Thus, for example, where the judge who issued the warrant also participated in the search, he was found not to be neutral and detached. [Lo-Ji Sales, Inc. v. New York](#), 442 U.S. 319, 327 (1979).
- b. **State Attorney General is Not Neutral and Detached.** Also, where the issuing authority was the State Attorney General “who was actively in charge of the investigation and later was to be chief prosecutor at the trial,” the “neutral and detached” magistrate requirement was violated. [Coolidge v. New Hampshire](#), 403 U.S. 443, 450 (1971).
- c. **District Attorney is Not Neutral and Detached.** Similarly, if a warrant were to be issued “by the District Attorney himself,” it would not meet the requirements of neutrality and detachment. [Mancusi v. DeForte](#), 392 U.S. 364, 371 (1968).
- d. **Where Magistrate has a Financial Interest in the Issuance of Warrants, He is Not Neutral and Detached.** Finally, where the issuing magistrate has a financial interest in the issuance of search warrants, the magistrate is not “neutral and detached.” [Connally v. Georgia](#), 429 U.S. 245, 250 (1977)(Issuance of warrants by justices of the peace who received financial compensation for each warrant issued held invalid, because it presented a situation “where the defendant [was] subjected to what surely is judicial action by an officer of a court who has ‘a direct, personal, substantial, pecuniary interest’ in his conclusion to issue or to deny the warrant”).

M. EPO #13: IDENTIFY THE COMPONENTS OF AN AFFIDAVIT FOR A SEARCH WARRANT

1. **General Rule – Search Warrants Must Particularly Describe the Place to Be Searched and the Person or Things to Be Seized.**
The Supreme Court has recognized that the decision to proceed “by search warrant is a drastic one, and must be carefully circumscribed so as to prevent unauthorized invasions of the sanctity of a man’s home and the privacies of life.” [Berger v. New York](#), 388 U.S. 41, 58 (1967). “General warrants ... are prohibited by the Fourth Amendment. The problem posed by the general warrant is not that of intrusion per se, but of a general, exploratory rummaging in a person’s belongings....” [Andresen v. Maryland](#), 427 U.S. 463, 480 (1976)(citation omitted). As noted by the Supreme Court:

"The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one 'particularly describing the place to be searched and the persons or things to be seized.' The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." [Maryland v. Garrison](#), 480 U.S. 79, 84 (1987)(footnote omitted).

Accordingly, any affidavit for a search warrant must particularly describe (1) the place to be searched, and (2) the person or things to be seized. See [Rule 41\(e\)\(2\)](#) ("The warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned").

2. **Affidavits Must Establish a Nexus Between the Items Sought and the Location to Be Searched.**

"It is critical to a showing of probable cause that the affidavit state facts sufficient to justify a conclusion that evidence or contraband will probably be found at the premises to be searched." [United States v. Hove](#), 848 F.2d 137, 140 (9th Cir. 1988)...

- a. **Standard for Establishing a "Nexus."** Accordingly, an affidavit for search warrant must contain "sufficient information to conclude that a fair probability existed that seizable evidence would be found in the place sought to be searched." [United States v. Pigrum](#), 922 F.2d 249, 253 (5th Cir. 1991). See also [United States v. Ribeiro](#), 397 F.3d 43, 49 (1st Cir. 2005) ("[T]he application must give someone of 'reasonable caution' reason to believe that evidence of a crime will be found at the place to be searched"); [United States v. Carpenter](#), 360 F.3d 591, 594 (6th Cir. 2004) ("There must ... be a 'nexus between the place to be searched and the evidence sought'"); [United States v. Martin](#), 297 F.3d 1308, 1314 (11th Cir. 2002) ("Specifically, the affidavit should establish a connection between the defendant and the residence to be searched and a link between the residence and any criminal activity"); [United States v. Strother](#), 318 F.3d 64, 70 (1st Cir. 2003) ("A warrant application must demonstrate probable cause to believe that (1) a crime has been committed (the 'commission' element), and (2) enumerated evidence of the offense will be found at the place to be searched (the 'nexus'").

element')"); [United States v. Tellez](#), 217 F.3d 547, 550 (8th Cir. 2000)(“We agree, of course, that there must be evidence of a nexus between the contraband and the place to be searched before a warrant may properly issue ...”).

- b. **Factors to Consider in Determining Whether the “Nexus” Requirement Has Been Satisfied.** The courts have come up with some factors that a magistrate may utilize in determining whether the “nexus” requirement has been satisfied. These factors include:

- 1) **Direct Observation;**
- 2) **The Nature of the Crime;**
- 3) **The Nature of the Items Sought;**
- 4) **The Opportunity for Concealment;** and
- 5) **Normal Inferences as to Where a Criminal Would Hide Evidence.**

See [United States v. Feliz](#), 182 F.3d 82, 88 (1st Cir. 1999), cert. denied, 528 U.S. 1119 (2000); [United States v. Jones](#), 994 F.2d 1051, 1056 (3d Cir. 1993); [United States v. Allen](#), 211 F.3d 970, 976 (6th Cir. 2000)(“[W]here a known person, named to the magistrate, to whose reliability an officer attests with some detail, states that he has seen a particular crime and particular evidence, in the recent past, a neutral and detached magistrate may believe that evidence of a crime will be found”); [United States v. Jackson](#), 756 F.2d 703, 705 (9th Cir. 1985); [United States v. Hendrix](#), 752 F.2d 1226, 1231 (7th Cir.), cert. denied sub nom. [Merritt v. United States](#), 471 U.S. 1021 (1985)(quotation omitted).

- c. **The “Nexus” May Be Established Through Inference.** “The nexus between the objects to be seized and the [place to be] searched need not, and often will not, rest on direct observation, but rather can be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide evidence of a crime.” [Feliz](#), 182 F.3d at 88. Of course, this is not to “suggest that, in all criminal cases, there will automatically be probable cause to search a suspect's residence.” [Id.](#) Instead, “[a]ll factors must be weighed in each case in order to assess the reasonableness of inferring that evidence of the crime can be found at the suspect's home.” [Id.](#) In sum, however, “interpreting a search warrant affidavit in the proper ‘commonsense and realistic fashion,’ may result in the

inference of probable cause to believe that criminal objects are located in a particular place, such as a suspect's residence, to which they have not been tied by direct evidence." Id. (internal citation omitted). See also Jones, 994 F.2d at 1056 ("While ideally every affidavit would contain direct evidence linking the place to be searched to the crime, it is well established that direct evidence is not required for the issuance of a search warrant").

d. **Examples.** The two examples listed below illustrate situations in which the required "nexus" can be inferred from the circumstances.

- 1) **Possession of Drugs/Drugs in Residence.** "As a matter of common sense, it is logical to infer that someone in possession of valuable contraband would store that contraband in a safe, accessible location such as his or her residence." United States v. Carpenter, 341 F.3d 666, 671-72 (8th Cir. 2003) (Affidavit provided information from reliable informant that suspect was in "possession of methamphetamine," but did not state drugs were at the suspect's residence).
- 2) **Dealing of Drugs/Drugs in Residence.** "In the case of drug dealers, evidence is likely to be found where the dealers live." United States v. Angulo-Lopez, 791 F.2d 1394, 1399 (9th Cir. 1986). See also United States v. Whitner, 219 F.3d 289, 297(3d Cir. 2000)("In the case of drug dealers, a number of other courts of appeals have held that evidence of involvement in the drug trade is likely to be found where the dealers reside"); United States v. McClellan, 165 F.3d 535, 546 (7th Cir.), cert. denied, 526 U.S. 1125 (1999)("In issuing a search warrant, a magistrate is entitled to draw reasonable inferences about where the evidence is likely to be kept ... and ... in the case of drug dealers evidence is likely to be found where the dealers live")(quotation, internal quotations and citations omitted); United States v. Luloff, 15 F.3d 763, 768 (8th Cir. 1993)(Observations of drug trafficking occurring away from dealer's residence along with officer's statement in affidavit that drug dealers often store evidence in their residences provided probable cause for search of dealer's house); United States v. Thomas, 989 F.2d 1252, 1255 (D.C. Cir. 1993)(per curiam)(Observations of drug trafficking occurring away from dealer's

residence can provide probable cause for search of dealer's house); [United States v. Williams](#), 974 F.2d 480, 482 (4th Cir. 1992)(per curiam)(Affidavit establishing that known drug dealer was residing in a motel room established sufficient probable cause to search motel room for drug paraphernalia); [United States v. Davidson](#), 936 F.2d 856, 859-60 (6th Cir. 1991)(Evidence of pattern of defendant's involvement in drug-dealing established probable cause to search defendant's residence although there was no direct evidence of drug dealing occurring at the residence). *But see* [United States v. Nolan](#), 199 F.3d 1180, 1184 (10th Cir. 1999)(Declining to decide whether evidence of drug trafficking will likely be found where a drug dealer lives).

3. **The Information in the Affidavit Cannot Be "Stale."** "Probable cause must exist when a warrant is issued, not merely at some earlier time." [United States v. LaMorie](#), 100 F.3d 547, 554 (8th Cir. 1996). *See also* [United States v. Ozar](#), 50 F.3d 1440, 1446 (8th Cir.), *cert. denied*, 516 U.S. 871 (1995). "There is no bright-line test for determining when information is stale." [United States v. Koelling](#), 992 F.2d 817, 822 (8th Cir. 1993)(citation omitted). Instead, "whether the averments in an affidavit are sufficiently timely to establish probable cause depends on the particular circumstances of the case." *Id.* *See also* [United States v. Greene](#), 250 F.3d 471, 480 (6th Cir. 2001)(Holding that "a staleness determination should be flexible, resting on numerous factors"). In deciding whether the information in a warrant affidavit is stale, courts have considered the following factors:
 - a. **Age of the Information Contained in the Affidavit.** "Age of the information supporting a warrant application is a factor in determining probable cause. If too old, the information is stale, and probable cause may no longer exist." [United States v. Harvey](#), 2 F.3d 1318, 1322 (3d Cir. 1993). *See also* [United States v. McNeese](#), 901 F.2d 585, 597 (7th Cir. 1990)(Emphasizing that, if the information contained in the warrant affidavit is too old, "it is considered stale and probable cause no longer exists"). "Age alone, however, does not determine staleness." [Harvey](#), 2 F.3d at 1322. *See also* [United States v. Williams](#), 897 F.2d 1034, 1039 (10th Cir. 1990), *cert. denied*, 500 U.S. 937 (1991)("The determination of probable cause is not merely an exercise in counting the days or even months between the facts relied on and the issuance of the warrant"); [United States v. Spikes](#), 158 F.3d 913, 923 (6th Cir. 1998), *cert. denied*, 525 U.S. 1086 (1999)(noting "the function of a staleness test in

the search warrant context is not to create an arbitrary time limitation within which discovered facts must be presented to a magistrate”)(citation omitted), *but see* U.S. v. Hython, 443 F.3d 480 (6th Cir. 2006) (*Leon* good-faith exception inapplicable where no reasonable officer could conclude that affidavit, which failed to allege any dates of drug transactions, established probable cause).

- b. **Whether the Criminal Activity is Continuing.** “The passage of time is less significant when there is cause to suspect continuing criminal activity.” Ozar, 50 F.3d at 1446. *See also* Greene, 250 F.3d at 481 (“Evidence of ongoing criminal activity will generally defeat a claim of staleness”); United States v. Collins, 61 F.3d 1379, 1384 (9th Cir.), *cert. denied*, 516 U.S. 1000 (1995)(Information in affidavit not stale where “more recent information in the affidavit established Collins’ continued, unlawful possession of firearms”); United States v. Pitts, 6 F.3d 1366, 1369-1370 (9th Cir. 1993)(“When the evidence sought is of an ongoing criminal business ... greater lapses of time are permitted if the evidence in the affidavit shows the probable existence of the activity at an earlier time”). As a general rule, “the longer the expected duration of the criminal activity ... the more likely that [information] from the seemingly distant past will be relevant to a current investigation.” United States v. Schaefer, 87 F.3d 562, 568 (1st Cir. 1996).
- c. **The Type of Evidence Sought in the Search.** The issue of staleness must also be considered in light of the type of evidence the officers are seeking. As a general rule, “courts demand less current information if the evidence sought is of the sort that can be reasonably be expected to be kept for long periods of time in the place to be searched.” United States v. McKeeever, 5 F.3d 863, 866 (5th Cir. 1993). *See also* Spikes, 158 F.3d at 923 (Among factors to be considered in staleness determination is “the thing to be seized,” and whether it is “perishable and easily transferable or of enduring utility to its holder”); Schaefer, 87 F.3d at 568 (“The warrant did not target items of transient existence, but, rather, featured chattels of relatively dear value and solid construction (including hardware commonly used in the growing and distribution of marijuana), likely to be in service for several years. Since these items possessed enduring worth and utility, information that might be considered ancient history in considering the probable whereabouts of more transient goods would be timely here”).
- d. **The Nature of the Location to Be Searched.** “The target’s

ownership of the real estate to be searched influences the staleness calculus.” [Schaefer](#), 87 F.3d at 568. See also [Spikes](#), 158 F.3d at 923 (Among factors to be considered in staleness determination is “the place to be searched,” and whether this place is a “mere criminal forum of convenience or secure operational base”); [United States v. Vaandering](#), 50 F.3d 696, 700 (9th Cir. 1995)(Court recognized that, “in the case of drug dealers, evidence is likely to be found where the dealers live”); [United States v. Jones](#), 159 F.3d 969, 975 (6th Cir. 1998)(“The recited statements supporting the search warrant and the fact that ‘in the case of drug dealers, evidence is likely to be found where the dealers live,’ ... support a finding of probable cause to support the issuance of the warrant”)(internal citation omitted).

4. **Anticipatory Search Warrants.** “An anticipatory warrant is a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.” [United States v. Grubbs](#), 547 U.S. 90, 94 (2006). “There is nothing unreasonable about authorizing a search for tomorrow, not today, when reliable information indicates that, say, the marijuana will reach the house, not now, but then.” [United States v. Gendron](#), 18 F.3d 955, 965 (1st Cir. 1994).
 - a. **Two prerequisites of probability must be satisfied.**
 - 1) It must be true that if the triggering condition occurs, there is a fair probability that contraband or evidence of a crime will be found in a particular place; and
 - 2) There must also be probable cause to believe that the triggering event will occur. [Grubbs](#), 547 U.S. at 96-97.
 - b. **The warrant may not be executed unless and until the triggering event occurs.** The triggering event must be described in the affidavit, and must be something more than the mere passage of time. [Grubbs](#), 547 U.S. at 96.
 - c. **The Fourth Amendment's particularity requirement does not require the triggering condition to be described in the warrant itself.** The Fourth Amendment does not set forth some general particularity requirement. It specifies only two matters that must be particularly described in the warrant: “the place to be searched” and “the persons or things to be seized.” The United States Supreme Court has previously rejected efforts to expand the scope of this provision to embrace unenumerated matters. [Grubbs](#), 547 U.S. at 97.

5. **Particularity and the Place To Be Searched.** Under the Fourth Amendment, the affidavit and warrant must particularly describe the place to be searched. “[T]he task of a judge issuing a search warrant is to determine if a warrant sufficiently describes the place to be searched, enabling the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that other premises might be mistakenly searched.” [United States v. White](#), 356 F.3d 865, 868-69 (8th Cir. 2004).

- a. **The Particular Description of the Place to Be Searched Need Not Be 100% Technically Accurate.** In describing the place to be searched with particularity, a law enforcement officer should be as technically accurate as possible. However, 100% technical accuracy is not required. Instead, “[p]ractical accuracy rather than technical precision controls the determination of whether a search warrant adequately describes the premises to be searched.” [United States v. Lora-Solano](#), 330 F.3d 1288, 1293 (10th Cir. 2003). See also [United States v. Thomas](#), 263 F.3d 805, 807 (8th Cir. 2001), *cert. denied*, 534 U.S. 1146 (2002)(In upholding warrant under good faith where wrong address found to be “clerical error;” court noted “[t]here are several cases in this circuit finding the particularity requirement satisfied although the description on the search warrant in question was not entirely accurate”); [United States v. Pelayo-Landero](#), 285 F.3d 491, 496 (6th Cir. 2002)(“An error in description does not ... automatically invalidate a search warrant”); [United States v. Addair](#), 168 F.3d 483, at *4 (4th Cir. 1998), *cert. denied*, 526 U.S. 1105 (1999)(per curiam)(“An erroneous description or a factual mistake in the search warrant will not necessarily invalidate the warrant and the subsequent search”). Examples of errors in the description of the place to be searched that typically arise include:

- 1) **An Incorrect Address.** Generally speaking, “[a] technically wrong address does not invalidate a warrant if it otherwise describes the premises with sufficient particularity so that the police can ascertain and identify the place to be searched.” [Lora-Solano](#), 330 F.3d at 1293. See also [United States v. Durk](#), 149 F.3d 464, 465-66 (6th Cir. 1998)(Warrant upheld even though house numbers in the warrant had been transposed from “4216” to “4612”). Law enforcement officers, however, may not make changes to the warrant, application, or affidavit once the warrant has been issued by a judicial officer.

Instead, the law enforcement officer should submit any desired amendment or alteration to a judicial officer for approval. U.S. v. Hang Le-Thy Tran, 433 F.3d 472 (6th Cir. 2006) (finding description of place to be searched legally sufficient despite typographical error in address, but noting officer had no legal authority to make the correction to the warrant or accompanying affidavit).

- 2) **Incorrect Directions to the Property Are Given.** A warrant may still be sufficiently particular even though directions provided to the property later turn out to be inaccurate or incomplete. See, e.g., Durk, 149 F.3d at 465-66 (Warrant upheld even though “description of Durk’s house as ‘3 houses to the **east** of Grandview” was incorrect, as “it was three houses to the **west** of Grandview”)(emphasis added); United States v. Rogers, 150 F.3d 851, 855 (8th Cir. 1998), cert. denied, 525 U.S. 1113 (1999)(Warrant upheld even though directions in “affidavit omitted the final turn that the officers had to make in order to find Rogers’ property, and that without this final direction, the search warrant could have led officers to either the Rogers property or the neighboring ... property”).

- b. **The Standard for Testing the Sufficiency of a Warrant’s Description is “Reasonable Certainty.”** “The test for determining the adequacy of the description of the location to be searched is whether the description is sufficient ‘to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched.’” United States v. Pervaz, 118 F.3d 1, 9 (1st Cir. 1997)(citation omitted). See also Lora-Solano, 330 F.3d at 1293 (Same); Pelayo-Landero, 285 F.3d at 496 (Same). Stated differently, the description provided must be “such that the officer with a search warrant can with **reasonable effort** ascertain and identify the place intended.” Steele v. United States, 267 U.S. 498, 503 (1925)(emphasis added). See also United States v. Bieri, 21 F.3d 811, 815 (8th Cir.), cert. denied, 513 U.S. 878 (1994)(“The warrant must also enable the searcher to locate and identify the premises with reasonable effort”). “To satisfy the particularity requirement, then, the description of the place to be searched must not be so broad as to allow the search of places for which probable cause to search has not been demonstrated, or so vague that an executing officer might mistakenly search a place for which authorization was not

granted.” [United States v. Petti](#), 973 F.2d 1441, 1444 (9th Cir. 1992), cert. denied, 507 U.S. 1035 (1993). An officer who knows – or should know – that the warrant fails to particularly describe the place to be searched cannot legally execute the warrant. [Jones v. Wilhelm](#), 425 F.3d 455, 465 (7th Cir. 2005) (“Where an officer executing a warrant knows or should have known that a warrant, which was valid when issued, now lacks the necessary particularity, then that officer cannot legally execute the warrant. Furthermore, if an officer obtains information while executing a warrant that puts him on notice of a risk that he could be targeting the wrong location, then the officer must terminate his search.”)

- c. **Particular Descriptions of Premises.** In describing with specificity the premises to be searched, numerous issues may arise. Some of the more common are addressed below.

- 1) **The Specific Description of a Premises Differs for Urban and Rural Premises.** “The requisite specificity of a description differs for rural and urban areas and depends heavily on the facts of each case.” [United States v. Langston](#), 970 F.2d 692, 703 (10th Cir.), cert. denied, 506 U.S. 965 (1992). *See also* [United States v. Williams](#), 687 F.2d 290, 293 (9th Cir. 1982) (“The necessary specificity of the description will differ as between urban and rural areas and depends heavily upon the factual circumstances of each case”).
- 2) **Multi-Occupancy Buildings.** “A search warrant for an apartment house or hotel or other multiple-occupancy building will usually be held invalid if it fails to describe the particular subunit to be searched with sufficient definiteness to preclude a search of one or more subunits indiscriminately.” 2 W. LaFave, *Search and Seizure* § 4.5(b), p. 526 (3d ed. 1996). *See also*, [United States v. Busk](#), 693 F.2d 28, 31 (3d Cir. 1982) (“A warrant authorizing entry into all apartments in a multiple dwelling house when probable cause has been shown for the search of only one of them does not satisfy the particularity requirement of the Fourth Amendment”); [United States v. Hinton](#), 219 F.2d 324, 326 (7th Cir. 1955) (“A warrant which describes an entire building when cause is shown for searching only one apartment is void”).
 - a) **Where Multi-Occupancy Building Appears to be Single-Occupancy From Outside.**

“Some courts have recognized a significant exception to the above rule: If the building in question from its outward appearance would be taken to be a single-occupancy structure and neither the affiant nor other investigating officers nor the executing officers knew or had reason to know of the structure’s actual multiple-occupancy character until execution of the warrant was underway, then the warrant is not defective for failing to specify a subunit within the named building.” 2 W. LaFave, *Search and Seizure* § 4.5(b), p. 529 (3d ed. 1996). See, e.g., [United States v. Logan](#), 998 F.2d 1025, 1032 (D.C. Cir. 1993)(Warrant valid where “the officers had no reason to suspect that the house was not a single family residence when they applied for the warrant” and “there were no signs advertising rooms for rent, no rows of mailboxes, [and] no multiple listing of names at the front door”); [United States v. Kyles](#), 40 F.3d 519, 524 (2d Cir. 1994), cert. denied, 514 U.S. 1044 (1995) (Court upheld search warrant because agents “had no reason to believe” defendant’s room was a separate residence; “factors that indicate a separate residence include separate access from the outside, separate doorbells, and separate mailboxes”); [United States v. Owens](#), 848 F.2d 462 (4th Cir. 1988) (officers entered the wrong apartment in good faith, where officers entered the only apartment fitting the description in the warrant and had no reason to believe the description was inaccurate.)

- b) **Where Multiple Occupants Share a Single Dwelling, a Search of the Entire Residence is Proper.** “A search warrant for the entire premises of a single family residence is valid, notwithstanding the fact that it was issued based on information regarding the alleged illegal activities of one of several occupants of a residence.” [United States v. Ayers](#), 924 F.2d 1468, 1480 (9th Cir. 1991). See also [United States v. Butler](#), 71 F.3d 243, 249 (7th Cir. 1995)(Where entire building is a single unit, “a finding of probable cause as to a portion of the premises is sufficient to support a search of the

entire structure"); 2 W. LaFave, *Search and Seizure* § 4.5(b), p. 532 (3d ed. 1996) ("In the community-occupation situation, the courts have held that a single warrant describing the entire premises so occupied is valid and will justify search of the entire premises").

d. **Particular Description of Persons.** "The general rule, of course, is essentially the same as that ... for other types of search warrants: the individual to be searched must be described with such particularity that he may be identified with reasonable certainty. The person's name, if known, should be set forth, but a name is not essential in all cases. Description of the individual by an alias, family relationship to another named person or even as "John Doe" will suffice when other facts, such as physical description and location, are also included." 2 W. LaFave, *Search and Seizure* § 4.5(e), p. 538 (3d ed. 1996). See, e.g., [United States v. Espinosa](#), 827 F.2d 604, 607, 611 (9th Cir. 1987), cert. denied, 485 U.S. 968 (1988) (Warrant that referred to defendant as "a male Latin, name unknown, referred to in affidavit as John Doe #1," and described him as a "male Latin, approximately 35 years of age, 5'8"/5'10", approximately 200 pounds with black hair and black full beard," held sufficiently particular because "the warrant and the accompanying, incorporated affidavit left the officers with no discretion as to whom to search"); [United States v. Ferrone](#), 438 F.2d 381, 389 (3d Cir.), cert. denied, 402 U.S. 1008 (1971) (Warrant that described "John Doe, a white male with black wavy hair and stocky build observed using the telephone in Apartment 4-C, 1806 Patricia Lane, East McKeesport, Pennsylvania" held valid because "the physical description of appellant, coupled with the precise location at which he could be found, was sufficient").

e. **Particular Description of Vehicles.** The particular description of a vehicle should incorporate as many identifying facts about the vehicle as can be obtained. Among some of the more common are:

- 1) **Name of Owner;**
- 2) **Make and Model of the Vehicle;**
- 3) **Year of the Vehicle;**
- 4) **Color of the Vehicle;**
- 5) **License Number of the Vehicle; and**
- 6) **Location of the Vehicle.**

“Quite clearly, rather detailed descriptions of vehicles listing a number of identifying characteristics together ... are more than sufficient.” 2 W. LaFare, *Search and Seizure* § 4.5(d), p. 538 (3d ed. 1996).

6. **The “Person or Things” to Be Seized Must Also Be Described With Particularity.** As noted above, the Fourth Amendment requires that a warrant particularly describe “the person or thing to be seized.” In essence, the Warrant clause has two distinct requirements contained in it. “First, [the warrant] must describe the place to be searched or things to be seized with sufficient particularity, taking account of the circumstances of the case and the types of items involved.” [United States v. Gourde](#), 382 F.3d 1003, 1008 (9th Cir. 2004)(citation omitted), *rev’d on other grounds by* [United States v. Gourde](#), 440 F.3d 1065 (9th Cir. 2006). And second, “it must be no broader than the probable cause on which it is based.” *Id.* “The constitutional standard for the particularity of a search warrant is that the language must be sufficiently definite to enable the searcher to reasonably ascertain and identify the things authorized to be seized.” [United States v. Saunders](#), 957 F.2d 1488, 1491 (8th Cir.), *cert. denied*, 506 U.S. 889 (1992). “The requirement of particularity arises out of a hostility to the Crown’s practice of issuing “general warrants” taken to authorize the wholesale rummaging through a person’s property in search of contraband or evidence.” [United States v. Upham](#), 168 F.3d 532, 535 (1st Cir.), *cert. denied*, 527 U.S. 1011 (1999). “In testing whether a specific warrant meets the particularity requirement, a court must inquire whether an executing officer reading the description in the warrant would reasonably know what items are to be seized.” [United States v. Kimbrough](#), 69 F.3d 723, 727 (5th Cir. 1995), *cert. denied*, 517 U.S. 1157 (1996).

a. **The Particularity Requirement Serves Three Purposes.**

Courts have noted three distinct rationales underlying the particularity requirement of the Fourth Amendment.

- 1) **The Particularity Requirement Limits the Discretion of the Officer(s) Executing the Warrant.** “The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” [Marron v. United States](#), 275 U.S. 192, 196 (1927). *See also* [Greene](#), 250 F.3d at 476-77 (“Particularity ‘eliminates the danger of unlimited discretion in the executing officer’s determination of

what is subject to seizure”).

2) **The Particularity Requirement Informs the Subject What the Officers Are Entitled to Take.**

“The requirement that the warrant itself particularly describe the material to be seized is not only to circumscribe the discretion of the executing officers but also to inform the person subject to the search and seizure what the officers are entitled to take.” [In re Application of Lafayette Academy, Inc. v. United States](#), 610 F.2d 1, 5 (1st Cir. 1979).

3) **The Particularity Requirement Defines the Scope of the Search That May Be Conducted.**

“The particularity requirement also ensures that a search is confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause.” [United States v. Janus Indus.](#), 48 F.3d 1548, 1554 (10th Cir.), *cert. denied*, 516 U.S. 824 (1995)(citation and internal brackets omitted). *See also* [United States v. Weber](#), 923 F.2d 1338, 1342 (9th Cir. 1991)(Particular description required “since vague language can cause the officer performing the search to seize objects on the mistaken assumption that they fall within the magistrate’s authorization”)(internal citations and quotations omitted).

See also [Doe v. Groody](#), 361 F.3d 232, 239 (3rd Cir. 2004)(“The requirement of a particular description *in writing* accomplishes three things. First, it memorializes precisely what search or seizure the issuing magistrate intended to permit. Second, it confines the discretion of the officers who are executing the warrant. Third, it ‘informs the subject of the search what can be seized’”)(internal citations and brackets omitted)(emphasis in original).

b. **Particular Descriptions of Various Types of Objects.**

“The specificity required in a warrant varies depending on the circumstances of the case and the type of items involved.” [United States v. Spilotro](#), 800 F.2d 959, 963 (9th Cir. 1986). *See also* [Kimbrough](#), 69 F.3d at 727 (“In circumstances where detailed particularity is impossible, generic language is permissible if it particularizes the types of items to be seized”); [United States v. Ables](#), 167 F.3d 1021, 1033 (6th Cir.), *cert. denied*, 527 U.S. 1027 (1999)(Noting “the degree of specificity required is flexible

and will vary depending on the crime involved and the types of items sought"). Described below are some particularity concerns regarding various types of objects, such as contraband or First Amendment materials.

- 1) **Books or Other First Amendment Materials.** "The constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain." [Roaden v. Kentucky](#), 413 U.S. 496, 504 (1973)[citing [Marcus v. Search Warrant of Property](#), 367 U.S. 717 (1961) and [A Quantity of Copies of Books v. Kansas](#), 378 U.S. 205 (1964)]. See also [Kimbrough](#), 69 F.3d at 727 ("In cases where warrants seek to seize material presumptively protected by the First Amendment, the level to which the items to be seized must be particularly described is heightened").
- 2) **Contraband.** When particularly describing contraband, much more latitude is given to an officer than when describing other types of objects. "A warrant describing items to be seized in broad and generic terms may be valid if the description is as specific as circumstances and nature of the activity under investigation permit." [United States v. Emmons](#), 24 F.3d 1210, 1216 (10th Cir. 1994)(citation and internal quotation omitted). So, for example, "if the purpose of the warrant is to seize illicit property or contraband ... a general reference is permissible." [United States v. Campbell](#), 256 F.3d 381, 389 (6th Cir.), cert. denied, 534 U.S. 1032 (2001). See, e.g., [Janus Indus.](#), 48 F.3d at 1554 (In drug paraphernalia case, court found this type of criminal activity "makes it difficult to list with great particularity the precise items desired to be seized which evidence such activity"); [United States v. Spears](#), 965 F.2d 262, 277 (7th Cir.), cert. denied, 506 U.S. 989 (1992)("The terms 'controlled substances' and 'materials for packaging controlled substances' are sufficiently specific on their face"); [United States v. Carpenter](#), 341 F.3d 666, 670 (8th Cir. 2003)("We have not clearly defined a degree of specificity or manner of description that is required to properly set forth a drug quantity for the purpose of establishing probable cause, nor do we believe it is wise to do so").

3) **Child Pornography.** In situations where officers are seeking to search for child pornography, a description of the items as “child pornography,” “sexual conduct between adults and minors,” or as material “depicting minors ... engaged in sexually explicit activity” will generally suffice to meet the particularity requirement of the Fourth Amendment. In these situations, “the words used in the warrant describe[] the material sought in such a way that no expert training or experience was needed to clarify and limit their meaning.” [United States v. Hall](#), 142 F.3d 988, 996 (7th Cir. 1998). See [Kimbrough](#), 69 F.3d at 727-28 (“Identification of visual depictions of minors engaging in sexually explicit conduct ... leaves little latitude to the officers”); [United States v. Layne](#), 43 F.3d 127, 133 (5th Cir.), *cert. denied*, 514 U.S. 1077 (1995)(Holding that phrase “child pornography” as used in the search warrant in the case “was sufficiently particular in that “[p]olice officers executing either warrant would be sufficiently guided in their discretion to know what items could be seized”); [United States v. Hurt](#), 795 F.2d 765, 772 (9th Cir. 1986), *cert. denied*, 484 U.S. 816 (1987) (Holding warrant particularly described the material to be seized where it authorized search for any material “depicting minors (that is, persons under the age of 16) engaged in sexually explicit activity”).

4) **Stolen Property.** “Courts have held that a warrant referring to stolen property of a certain type is insufficient if that property is common.” [Campbell](#), 256 F.3d at 388-389. See also [Spilotro](#), 800 F.2d at 965 (Description of “gemstones and other items of jewelry” found impermissibly broad).

c. **Particularity and “All Persons” Search Warrants.** An “all persons” search warrant is one that “authoriz[es] the search of every person on a stated premises.” [United States v. Guadarrama](#), 128 F. Supp. 2d 1202, 1206 (E.D. Wis. 2001). Whether an “all persons” warrant is valid under the Fourth Amendment has engendered considerable debate among the courts, both state and federal. “Only a smattering of federal courts have addressed the difficulties presented by the inclusion of ‘all persons’ language in a premises search warrant, and a few others have mentioned it in passing. The most extensive treatment of the question, by far, has been given in the state courts.” [Owens v. Lott](#), 372 F.3d 267, 274 (4th Cir. 2004)(internal citations omitted). In sum, two

approaches have been formed by the courts that have addressed the issue.

- 2) **The Majority View is That “All Persons” Warrants Are Not Per Se Unconstitutional.** “[A] majority of the courts have rejected the idea that an ‘all persons’ warrant could never under any circumstances be constitutional.” [Id.](#) at 275. Thirty jurisdictions adhere to this view, which was expressed in the leading case on this issue, [State v. De Simone](#), 288 A.2d 849 (N.J. 1972). This view holds that “an ‘all persons’ search warrant is authorized under the Fourth Amendment only if the supporting affidavit establishes probable cause that evidence of illegal activity will be found upon every person likely to fall within the warrant’s scope.” [Guadarrama](#), 128 F. Supp. 2d at 1207 (collecting cases). The federal courts that have addressed “all persons” warrants have used this standard. See [Owens](#), 372 F.3d at 276 (“We agree that the majority view, as articulated in [De Simone](#), correctly holds that an ‘all persons’ warrant can pass constitutional muster if the affidavit and information provided to the magistrate supply enough detailed information to establish probable cause to believe that all persons on the premises at the time of the search are involved in criminal activity”); [Guadarrama](#), 128 F. Supp. 2d at 1212 (Adopting [De Simone](#) as the standard for determining validity of “all persons” warrants); [Marks v. Clarke](#), 102 F.3d 1012, 1029 (9th Cir. 1996)(“[W]e believe that a warrant to search ‘all persons present’ for evidence of a crime may only be obtained when there is reason to believe that all those present will be participants in the suspected criminal activity”); [United States v. Shields](#), 1999 U.S. App. LEXIS 2496, at *7 (10th Cir.) (unpublished), [cert. denied](#), 528 U.S. 839 (1999)(“The crucial question in assessing the validity of an “all persons” warrant is whether there is a ‘sufficient nexus among the criminal activity, the place of the activity, and the persons in the place to establish probable cause’”(citation omitted); [United States v. Graham](#), 563 F. Supp. 149, 151 (W.D.N.Y. 1983)(Upholding seizure of evidence pursuant to “all persons” warrant because affidavit established probable cause to search all persons found in the place to be searched).
- 3) **The Minority View is That “All Persons” Warrants**

Are Facially Unconstitutional. The minority view on “all persons” warrants, “held or suggested by eight jurisdictions, is that ‘all persons’ warrants are facially unconstitutional because of their general resemblance to general warrants.” [Guadarrama](#), 128 F. Supp. 2d at 1207. See, e.g., [State v. Lewis](#), 566 P.2d 678, 680 (Ariz. 1977)(dicta)(Issuance of “all persons” warrant “would authorize a general warrant by which large numbers of persons could be searched without naming them and would be an unreasonable search under the Constitution of the United States”); [State v. Cochran](#), 217 S.E. 2d 181, 183-84 (Ga. Ct. App. 1975)(Holding “a warrant to search designated premises will not authorize the search of every individual who happens to be on the premises,” and that “[w]arrants ‘which sweep so broadly and with so little discrimination are obviously deficient’”)(internal citations omitted).

NOTE: It would be fair to say that, “[t]he more public a place, the less likely a search of all persons will be sustained.” [Guadarrama](#), 128 F. Supp. 2d at 1212. In fact, “‘all persons’ warrants for public places are almost never sustainable under [De Simone](#), because of the ‘substantial likelihood that a person with no connection to criminal wrongdoing might be subjected to search.’” [Id.](#) [citing [State v. Kinney](#), 698 N.E. 2d 49, 54 (Ohio 1998)]. Nevertheless, the standard set out in [De Simone](#) “does not automatically authorize ‘all persons’ warrants for non-public places, especially private residences.” [Id.](#) at n.14 (emphasis added). This is because “[i]nnocent persons are likely to be present in a residence, even if there is probable cause that the residence also contains evidence of illegal activity.” [Id.](#) In fact, the Ninth Circuit “has held that ‘all persons’ warrants are never constitutional for ‘a raid on any family home where innocent family members or friends might be residing or visiting.’” [Id.](#) (citing [Marks](#), 102 F.3d at 1029).

7. **The Warrant Need Not Describe the Manner of Execution**

“The Fourth Amendment does not set forth some general particularity requirement. It specifies only two matters that must be particularly described in the warrant: ‘the place to be searched’ and ‘the persons or things to be seized.’” [United States v. Grubbs](#), 126

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S.Ct. 1494, 1500-1501 (2006). Thus, there is no constitutional requirement that the language in the warrant or its attachments specify the manner in which the warrant is to be executed.

Note, however, that agents seizing computers and storage media should explain in the affidavit why an off-site search of the media will be necessary. Failure to do so may render the warrant overbroad, in that it allows agents to seize and remove voluminous amounts of material that may be outside the scope of the warrant. See United States v. Hill, 459 F.3d 966 (9th Cir. 2006).

8. **Under Rule 41(c) of the Federal Rules of Criminal Procedure, Search Warrants Can Authorize the Seizure of Five Different Types of Items.** Rule 41(c) provides that “a warrant may be issued for any of the following”:

- a. Evidence of a crime;
- b. Contraband;
- c. Fruits of crime, or other items illegally possessed;
- d. Property designed for use, intended for use, or used in committing a crime; or
- e. A person to be arrested or a person who is unlawfully restrained.

In sum, the Fourth Amendment requires that there be “a nexus - automatically provided in the case of fruits, instrumentalities or contraband - between the item to be seized and criminal behavior.” Warden v. Hayden, 387 U.S. 294, 307 (1967).

9. **False or Misleading Information in the Affidavit.** In Franks v. Delaware, 438 U.S. 154 (1978), “the Supreme Court addressed at length whether a false statement by a government affiant invalidates a search [or arrest] warrant.” United States v. Hammett, 236 F.3d 1054, 1058 (9th Cir.), cert. denied, 534 U.S. 866 (2001). In sum, before a warrant is issued, the Fourth Amendment requires a truthful factual showing in the affidavit used to establish probable cause. See Franks, 438 U.S. at 165-66 (“When the Fourth Amendment demands a factual showing sufficient to compromise ‘probable cause,’ the obvious assumption is that there will be a truthful showing”). As noted by the Supreme Court:

“where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the

finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." [Franks](#), 438 U.S. at 155-156.

See also [United States v. Salter](#), 358 F.3d 1080, 1085 (8th Cir. 2004) ("Police cannot obtain valid search warrants where they knowingly or recklessly provide misinformation to a magistrate who issues a warrant, unless probable cause exists when the affidavit is properly reconstructed with truthful information"); [United States v. Basham](#), 268 F.3d 1199, 1204 (10th Cir. 2001), *cert. denied*, 535 U.S. 945 (2002) ("It is a violation of the Fourth Amendment for an affiant to knowingly and intentionally, or with reckless disregard for the truth, make a false statement in an affidavit. ... Where a false statement is made in an affidavit for a search warrant, the search warrant must be voided if the affidavit's remaining content is insufficient to establish probable cause")(internal citation omitted).

- f. **The Requirement for a [Franks](#) Hearing.** A defendant who seeks to have evidence suppressed under the rule set out in [Franks](#) must satisfy a two-part test. First, the defendant must show "that the affiant knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant." [Sherwood v. Mulvihill](#), 113 F.3d 396, 399 (3d Cir. 1997). Second, the defendant must show that the false statements or omissions were "material, or necessary, to the finding of probable cause." *Id.* "This showing of deliberate or reckless falsehood is 'not lightly met.'" [United States v. Lucca](#), 377 F.3d 927, 931 (8th Cir. 2004) (citation omitted). A closer examination of this two-part test makes it clear that, in order to obtain a hearing under [Franks](#), a defendant must make a "substantial preliminary showing" of three separate facts. [United States v. Whitley](#), 249 F.3d 614, 620 (7th Cir. 2001). See also [United States v. Rodriguez](#), 367 F.3d 1019, 1025 (8th Cir. 2004), *vacated and remanded for resentencing by Rodriguez v. United States*, 543 U.S. 1101 (2005) ("Conclusory allegations of falsehood are insufficient to make a substantial preliminary showing that a false statement was intentionally or recklessly included in the affidavit")(citation omitted); [United States v. Merritt](#), 361 F.3d

1005, 1010 (7th Cir. 2004) *vacated and remanded for resentencing* by [Merritt v. United States](#), 543 U.S. 1099 (2005) (noting defendant must make “a substantial preliminary showing, typically in a motion to suppress” of three separate facts).

- 1) **First, the Defendant Must Show the Warrant Affidavit Includes a False Statement or Material Omission.** The first step in any [Franks](#) claim is that the defendant must make a showing that the warrant affidavit has either a false statement in it or that a material omission has occurred.
 - a) **False Statements.** First, the defendant may meet the first step in a [Franks](#) claim by showing that the affidavit includes false information. [Franks](#), 438 U.S. at 155. See also [United States v. Gladney](#), 48 F.3d 309, 313 (8th Cir. 1995)(Noting that, to prevail on a [Franks](#) claim, the defendant must show, *inter alia*, “that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit”)(citation omitted).
 - b) **Material Omissions.** In addition to a false statement in the affidavit, “a material omission of information may also trigger a [Franks](#) hearing.” [United States v. Castillo](#), 287 F.3d 21, 25 (1st Cir. 2002). See also [United States v. Stropes](#), 387 F.3d 766, 771 (8th Cir. 2004)(“Under [Franks](#), if an officer omits critical information from a search warrant application and obtains a warrant, the resultant search may be unreasonable under the Fourth Amendment”); [United States v. Ketzeback](#), 358 F.3d 987, 990 (8th Cir. 2004)(“Omissions likewise can vitiate a warrant ...”); [United States v. Tomblin](#), 46 F.3d 1369, 1377 (5th Cir. 1995)(“Omissions ... can constitute improper government behavior”) (citation omitted). “By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw. To allow a magistrate to be misled in such a manner could denude the probable cause requirement of all real meaning.” [United States v. Stanert](#), 762 F.2d 775, 781 (9th Cir. 1985).

- 2) **Second, the Defendant Must Show That the False Statement or Material Omission was Made Knowingly and Intentionally or With Reckless Disregard For the Truth.** After showing that a false statement or material omission was made, the defendant must show that the false statement or omission was made "knowingly or with reckless disregard for the truth." [Franks](#), 483 U.S. at 155. See also [Rodriguez](#), 367 F.3d at 1025-26 ("When no proof is offered that an affiant deliberately lied or recklessly disregarded the truth, a [Franks](#) hearing is not required")(citation omitted).

a) **Knowingly and Intentionally.** "Knowingly and intentionally" requires a separate analysis for assertions and omissions.

- (1) **Assertions.** The Supreme Court does not require that all statements in an affidavit be completely accurate. Instead, the Court simply requires that the statements be "believed or appropriately accepted by the affiant as true." [Franks](#), 438 U.S. at 165. As stated by one court: "The fact that a third party lied to the affiant, who in turn included the lies in a warrant affidavit does not constitute a [Franks](#) violation. A [Franks](#) violation occurs only if the affiant knew the third party was lying, or if the affiant proceeded in reckless disregard of the truth." [United States v. Jones](#), 208 F.3d 603, 607 (7th Cir. 2000). Accordingly, "misstatements resulting from negligence or good faith mistakes will not invalidate an affidavit which on its face establishes probable cause." [Hammett](#), 236 F.3d at 1058 (citation omitted). See also [Franks](#), 438 U.S. at 171 ("Allegations of negligence or innocent mistake are insufficient"); [United States v. Colonna](#), 360 F.3d 1169, 1174 (10th Cir. 2004) ("However, a misstatement in an affidavit that is merely the result of simple negligence or inadvertence ... does not invalidate a warrant:"); [United States v. Clapp](#), 46 F.3d 795, 799 (8th Cir. 1995) ("Mere

negligence or innocent mistake is insufficient to void a warrant”) (citation omitted); [United States v. Capozzi](#), 347 F.3d 327, 332 (1st Cir. 2003), cert. denied, 540 U.S. 1168, 124 S. Ct. 1187 (2004)(“Mere negligence or inattention to detail in preparing an affidavit does not deprive the government of the benefits of the [Leon](#) exception”).

- (2) **Omissions.** With regards to omissions, the defendant must show “that the affiant omitted facts with the intent to make ... the affidavit misleading.” [United States v. LaMorie](#), 100 F.3d 547, 555 (8th Cir. 1996). *See also* [Clapp](#), 46 F.3d at 799 (“The defendant must show that the facts were omitted with the intent to make ... the affidavit misleading”); [Gladney](#), 48 F.3d at 313 (same). As with assertions, negligent omissions will not invalidate a warrant. *See, e.g.,* [Ketzeback](#), 358 F.3d at 990 (While “every factual omission is intentional insofar as the omission is made knowingly,” the officer must have omitted the facts “with the intent to mislead or in reckless disregard of the omissions’ misleading effect” to invalidate a warrant); [United States v. McCarty](#), 36 F.3d 1349, 1356 (5th Cir. 1994) (“Negligent omissions will not undermine the affidavit”).

- b) **Reckless Disregard for the Truth.** “Reckless disregard for the truth means different things when dealing with omissions and assertions.” [Wilson v. Russo](#), 212 F.3d 781, 787 (3d Cir. 2000).

- (1) **Assertions.** Assertions are made with “reckless disregard for the truth” when “viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.” [Clapp](#), 46 F.3d at 801 n.6.

- (2) **Omissions.** Omissions are made with “reckless disregard for the truth” when a law enforcement officer omits facts that “any reasonable person would have known ... this was the kind of thing the judge would wish to know.” [United States v. Jacobs](#), 986 F.2d 1231, 1235 (8th Cir. 1993). See also [Wilson](#), 212 F.3d at 788 (same).

- 3). **Third, the Defendant Must Show That the Allegedly False Statement is Necessary to a Finding of Probable Cause.** Finally, the plaintiff must show that the false statements or omissions were “material” to a finding of probable cause. “Disputed issues are not material if, after crossing out any allegedly false information and supplying any omitted facts, the ‘corrected affidavit’ would have supported a finding of probable cause.” [Velardi v. Walsh](#), 40 F.3d 569, 574 (2d Cir. 1994)(citation omitted). Thus, “even if the defendant makes a showing of deliberate falsity or reckless disregard for the truth by law enforcement officers, he is not entitled to a hearing if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause.” [United States v. Dickey](#), 102 F.3d 157, 161-162 (5th Cir. 1996) (citation omitted). See also [Rodriguez](#), 367 F.3d at 1026 (Noting that, “in order to establish a [Franks](#) violation,” the defendant must “show that the remaining content of the affidavit was insufficient to establish probable cause”)(citation omitted); [United States v. Higgins](#), 995 F.2d 1, 4 (1st Cir. 1993)(“When a defendant offers proof of an omission, ‘the issue is whether, even had the omitted statements been included in the affidavit, there was still probable cause to issue the warrant’”)(citation omitted); [United States v. Froman](#), 355 F.3d 882, 889 (5th Cir. 2004)(“In determining whether probable cause exists without the false statements a court must ‘make a practical, common-sense decision as to whether, given all the circumstances set forth in the affidavit [minus the alleged misstatements], there is a fair probability that contraband or evidence of a crime will be found in a particular place’”)(citation omitted).

g. **Misrepresentations or Omissions By Someone Other**

Than the Affiant. In assessing whether [Franks](#) applies to misrepresentation or omissions by someone other than the affiant, courts look to whether the provider of the information is a private party or a government official.

- 1) **Information Provided By Private Citizens Generally Cannot Be the Basis for a Franks Claim.** “The deliberate falsity or reckless disregard whose impeachment is permitted ... is only that of the affiant, not of any **nongovernmental** informant.” [Franks](#), 438 U.S. at 171 (emphasis added). Thus, when a private informant or citizen provides information that later turns out to be false or misleading, this “does not present grounds to challenge the search warrant so long as the affiant in good faith accurately represents what the informant told him.” [United States v. Wapnick](#), 60 F.3d 948, 956 (2d Cir. 1995), cert. denied, 517 U.S. 1187 (1996), and cert. denied, 518 U.S. 1021 (1996).
- 2) **Information Provided by Other Government Officials Can Be the Basis for a Franks Claim.** As noted above, the general rule is that a false statement made by a private citizen and reasonably relied upon by the affiant cannot form the basis for a [Franks](#) claim. “However, when the informant is himself a government official, a deliberate or reckless omission by the informant can still serve as grounds for a [Franks](#) suppression.” [Wapnick](#), 60 F.3d at 956. See also [United States v. DeLeon](#), 979 F.2d 761, 764 (9th Cir. 1992)(“The Fourth Amendment places restrictions and qualifications on the actions of the government generally, not merely on affiants”); [Hart v. O'Brien](#), 127 F.3d 424, 448 (5th Cir. 1997), cert. denied, 525 U.S. 1103 (1999)(Collecting cases and noting agreement “with the reasoning of these circuit courts that a deliberate or reckless misstatement may form the basis for a [Franks](#) claim against a government official who is not the affiant”). Such a rule ensures that law enforcement personnel cannot “insulate one officer's deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity.” [Franks](#), 438 U.S. at 164 n.6.

N. EPO #14: IDENTIFY CIRCUMSTANCES WHEN A TELEPHONIC SEARCH WARRANT SHOULD BE OBTAINED

1. **General Rule – Telephonic Search Warrants May Be Obtained**

Under Rule 41(d)(3) of the Federal Rules of Criminal Procedure.

A “judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.” [Rule 41\(d\)\(2\)\(B\)](#). In such circumstances, [Rule 41\(d\)\(3\)](#) of the Federal Rules of Criminal Procedure, titled “Requesting a Warrant By Telephonic or Other Means,” outlines the rules regarding obtaining telephonic search warrants. Subsection (A) of the rule provides, in pertinent part, that:

“A magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means.”

2. **The Purpose of Rule 41(d)(3) Is to Encourage Law Enforcement Officers to Seek Search Warrants in Situations Where They Otherwise Might Not.** The purpose of [Rule 41\(d\)\(3\)](#) was “to encourage Federal law enforcement officers to seek search warrants in situations when they might otherwise conduct warrantless searches.” [United States v. McEachin](#), 670 F.2d 1139, 1147 (D.C. Cir. 1981)(citation omitted). See also [United States v. Cuaron](#), 700 F.2d 582, 588 (10th Cir. 1983)(“The rule’s legislative history demonstrates that Congress intended to encourage police to procure telephone warrants where ‘the existence of exigent circumstances is a close question and the police might otherwise conduct a warrantless search’”).
 - a. **The Time Necessary to Obtain a Search Warrant is Relevant in Determining Whether Exigent Circumstances Existed.** “The time necessary to obtain a warrant is relevant to a determination whether circumstances are exigent.” [Cuaron](#), 700 F.2d at 589; [McEachin](#), 670 F.2d at 1146 (“We think courts must also consider the amount of time necessary to obtain a warrant by telephone in determining whether exigent circumstances exist”). Further, “warrants obtained by telephone generally take less time to procure than traditional warrants....” [Cuaron](#), 700 F.2d 589; [United States v. Whitfield](#), 629 F.2d 136, 142 (D.C. Cir. 1980), cert. denied, 449 U.S. 1086 (1981)(“With telephonic warrants now permissible ... the delay in [obtaining a warrant] may not be long at all”). Accordingly, “trial courts must consider the availability of a telephone warrant in determining whether exigent circumstances existed, unless the critical nature of the circumstances clearly prevented the effective use of any warrant procedure.” [Cuaron](#), 700 F.2d at 589 (citation omitted).
 - b. **Failing to Obtain a Telephonic Search Warrant Can Result in the Suppression of Evidence.** “Failing to make

a good faith attempt to obtain a telephonic warrant or to present evidence showing that a telephonic warrant was unavailable ordinarily requires suppression." [United States v. Tarazon](#), 989 F.2d 1045, 1050 (9th Cir.), cert. denied, 510 U.S. 853 (1993)(citation omitted). See also [United States v. Alvarez](#), 810 F.2d 879, 883 (9th Cir. 1987)(Where agents had a minimum of 90 minutes, court could not "say conclusively that the agents ... could not have complied with [Rule 41(d)(3)]"); [United States v. Patino](#), 830 F.2d 1413, 1416 (7th Cir. 1987), cert. denied, 490 U.S. 1069 (1989) (Where agent waited 30 minutes for backup to arrive before entering home without a warrant, court noted "a telephonic search warrant should have been sought during the thirty-minute period the agent awaited the other officers"); [United States v. Santa](#), 236 F.3d 662 (11th Cir. 2000) (Police should have attempted to obtain a telephonic warrant where police conducted a controlled buy with nearly three hours' notice, there was no evidence that suspects were aware of surveillance, and no evidence to suggest suspects would destroy the drugs before receiving payment).

3. **Who Can Issue Telephonic Search Warrants?** Unlike traditional Federal search warrants issued pursuant to [Rule 41](#), a state court judge may not issue a telephonic search warrant. See [Rule 41\(d\)\(3\)](#).
4. **There are a Number of Procedural Requirements for Issuance of a Telephonic Search Warrant.** There are a variety of procedural requirements that must be met in order to obtain a telephonic search warrant. It should be remembered that there are actually two warrants involved in a telephonic warrant request: The "original" warrant, completed by the Magistrate Judge, and a "duplicate original warrant," completed by the law enforcement officer involved.
 - a. **First, a "Duplicate" Original Warrant Must Be Prepared.** First, the applicant must prepare a "proposed duplicate original warrant." The duplicate original warrant has to be in writing, although the affidavit does not. See [Rule 41\(e\)\(3\)\(A\)](#).
 - b. **Second, the "Duplicate" Original Warrant Must Be Read Verbatim or Transmitted by Reliable Electronic Means to the Magistrate Judge.** Second, the applicant must "read or otherwise transmit the contents of the document verbatim to the magistrate judge." [Rule 41\(e\)\(3\)\(A\)](#). This means that the requesting officer may, if the option is available, transmit the duplicate original warrant to the magistrate judge by email or facsimile.

- c. **Third, the Magistrate Judge Prepares an "Original" Warrant.** Third, pursuant to [Rule 41\(e\)\(3\)\(B\)](#), "if the applicant reads the contents of the proposed duplicate original warrant, the magistrate judge must enter those contents into an original warrant." Of course, "the magistrate judge may modify the original warrant." In that case, the judge will direct the applicant to modify the proposed duplicate original warrant accordingly. [Rule 41\(e\)\(3\)\(C\)](#).

If the applicant sends the proposed duplicate original warrant to the judge by reliable electronic means, that transmission may serve as the original warrant. If the judge chooses to modify the warrant, he or she must transmit the modified warrant back to the applicant by reliable electronic means or direct the applicant to modify the proposed duplicate original warrant accordingly. *Id.*

- d. **Fourth, the Magistrate Judge and the Applicant Shall Sign the Warrants.** Fourth, "upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant." [Rule 41\(e\)\(3\)\(D\)](#).
- e. **Finally, the Time of Execution Must Be Entered on the "Duplicate" Original Warrant.** Finally, upon execution of the warrant, "the officer executing the warrant must enter on its face the exact date and time it is executed." [Rule 41\(f\)\(1\)\(A\)](#).

5. **In Situations Involving Telephonic Warrants, There are Recording and Certification Requirements.** In addition to the requirements listed above, the Rule also has recording and certification requirements that must be met.

- a. **The Applicant Must Immediately Be Placed Under Oath or Affirmation.** "Upon learning that an applicant is requesting a warrant, a magistrate judge must... place under oath the applicant and any person on whose testimony the application is based." [Rule 41\(d\)\(3\)\(B\)\(i\)](#); [United States v. Rome](#), 809 F.2d 665, 667 (10th Cir. 1987)("The rule's requirements are clear ... the caller must be under oath from the inception" of the call).
- b. **Judge Must Make a Verbatim Record of the Conversation.** Additionally, pursuant to [Rule 41\(d\)\(3\)\(B\)\(ii\)](#), a magistrate judge must "make a verbatim record of the conversation with a suitable recording device, if available, or by a court reporter, or in writing."

- c. **The Recording of the Conversation Must Be Certified.** Finally, "the magistrate judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the magistrate judge and filed with the clerk." [Rule 41\(d\)\(3\)\(C\)](#). "The purpose of transcribing the taped conversation and certifying the transcription is to give reviewing courts an accurate account of the facts originally presented to the magistrate which resulted in the issuance of a search warrant." [United States v. Loyd](#), 721 F.2d 331, 333 (11th Cir. 1983).

What happens if the warrant is never reduced to a written form? Fed. R. Crim. P. 41(e)(3)(A) requires, among other things, that an investigator who requests a telephonic warrant and the judge who approves it to each create written copies of the authorization for the search. Neither happened in [United States v. Cazares-Olivas](#), 2008 U.S. App. LEXIS 1851 (7th Cir. 2008). The other requirements for telephonic warrants were satisfied, however, where the agent was under oath, and the magistrate judge determined the existence of probable cause and kept a recording of the telephone call. The Seventh Circuit, relying upon the Supreme Court's reasoning in [Hudson v. Michigan](#), (2006), held that depriving the truth-seeking process of the fruit of the searches is not justified by the marginal deterrent value that suppression would have in these circumstances. "Had the magistrate judge written out and signed a warrant after hanging up the phone, everything would have proceeded exactly as it did. The agents would have conducted the same search and found the same evidence." [Cazares-Olivas](#), 2008 U.S. App. LEXIS 1851 at *6. The defendants in this case "received the benefit of a magistrate judge's impartial evaluation before the search occurred," *id.* at *8, which is what the Fourth Amendment requires.

O. **EPO #15: IDENTIFY THE LEGAL REQUIREMENTS FOR EXECUTING A SEARCH WARRANT, E.G., AUTHORITY TO EXECUTE; TIME OF ENTRY; METHOD OF ENTRY; LOCATIONS ON A PREMISES WHICH MAY BE SEARCHED; DURATION OF THE SEARCH; AND INVENTORY**

1. **Rule 41(d)(2)(A) of the Federal Rules of Criminal Procedure Dictates Who May Request a Federal Search Warrant.** [Rule 41\(d\)\(2\)\(A\)](#) of the Federal Rules of Criminal Procedure provides that federal search warrants may be requested by:
 - a. **A Federal Law Enforcement Officer May Request a Federal Search Warrant.** The phrase “federal law enforcement officer” is defined [in Rule 41\(a\)\(2\)\(C\)](#) to mean “a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.” Of note, law enforcement officers are required to obtain the concurrence of the United States Attorney’s Office before applying for a search warrant. Specifically, [28 CFR § 60.1](#) provides “that only in the very rare and emergent case is the law enforcement officer permitted to seek a search warrant without the concurrence of the appropriate U.S. Attorney’s office.”
 - b. **An Attorney for the Government May Request a Federal Search Warrant.** An “attorney for the government” is defined in [Rule 1\(b\)\(1\)](#), and includes Assistant United States Attorneys.
2. **Who May Execute a Federal Search Warrant?** [Rule 41\(e\)\(1\)](#) provides that a search warrant must be issued “to an officer authorized to execute it.” Who such an officer is must be determined by reference to [Title 18 U.S.C. § 3105](#). This section provides as follows: “A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.” As a general rule, the Supreme Court has held that “it is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant” [Dalia v. United States](#), 441 U.S. 238, 257 (1979). Issues can arise, however, when non-federal law enforcement officers assist in the execution of a federal search warrant.
 - a. **State and Local Law Enforcement Officers May Assist in the Execution of Federal Search Warrants.** State and

local law enforcement officers are permitted to assist in the execution of search warrants by [§ 3105](#). These officers may be "cross-designated" as federal law enforcement officers, but are not required to be, so long as a federal law enforcement officer is directing the execution of the search warrant. See, e.g., [United States v. Medlin](#), 842 F.2d 1194, 1196 (10th Cir. 1988)(Where "local police officers were acting under federal authority and were subject to federal control when they were present at the search pursuant to the warrant issued to the ATF agents," the statute "does not require that a person assisting an officer in the execution of a warrant be an officer acting within his or her jurisdiction. Consequently, we find that there was nothing impermissible in Deputy Carter's presence at the Medlin search").

b. Private Citizens May Assist in the Execution of Federal Search Warrants.

"Federal constitutional law does not proscribe the use of civilians in searches. In fact, Congress has explicitly authorized the practice, and courts have repeatedly upheld the practice." [Bellville v. Town of Northboro](#), 375 F.3d 23, 32 (1st Cir. 2004). "The use of civilians in the execution of federal search warrants is governed by [\[Title 18 U.S.C. § 3105\]](#)." [United States v. Sparks](#), 265 F.3d 825, 831 (9th Cir. 2001).

1) Generally, Three Requirements Must Be Met When a Private Citizen Assists in the Execution of a Federal Search Warrant.

Courts addressing this issue have announced various factors that must be taken into account when private citizens assist in the execution of a federal search warrant. In [Sparks](#), *supra*, the court reviewed the various cases dealing with searches by private citizens and came up with three (3) general principles to apply in determining the validity of a search by a private citizen assisting a law enforcement officer in the execution of a search warrant:

a) First, the Civilian's Role Must Be to Aid the Efforts of the Police.

In other words, civilians cannot be present simply to further their own goals. [Wilson v. Layne](#), 526 U.S. 603, 613-14 (1999) (Inviting media to "ride along" on execution of warrant violates the defendant's Fourth Amendment rights); [Bellville](#), 375 F.3d at 33 (Citizen participating in execution of search warrant must "have been serving a legitimate investigative function"); [Buonocore v.](#)

[Harris](#), 65 F.3d 347, 356 (4th Cir. 1995) (“We have no doubt that the Fourth Amendment prohibits government agents from allowing a search warrant to be used to facilitate a private individual’s independent search of another’s home for items unrelated to those specified in the warrant. Such a search is not ‘reasonable’”); [Bills v. Aseltine](#), 958 F.2d 697, 702 (6th Cir. 1992), cert. denied, 516 U.S. 865 (1995) (suppressing evidence discovered by a security guard who “was present, not in aid of the officers or their mission, but for his own purposes involving the recovery of ... property not mentioned in any warrant”). As one court has noted: “To conclude otherwise would authorize law enforcement officers to invite private individuals to engage in conduct that would constitute trespass were it not conducted under the guise of a search warrant.” [Buonocore](#), 65 F.3d at 359.

b) **Second, the Officer Must Be in Need of Assistance.** “Police cannot invite civilians to perform searches on a whim; there must be some reason why a law enforcement officer cannot himself conduct the search and some reason to believe that postponing the search until an officer is available might raise a safety risk.” [Sparks](#), 265 F.3d at 832. *See also* [Bellville](#), 375 F.3d at 33 (“Also, the officers must have some demonstrable need for the presence of the civilian”).

c) **Third, the Civilians Must Be Limited to Doing What the Police Had Authority to Do.** [Coolidge v. New Hampshire](#), 403 U.S. 443, 487 (1971); [United States v. Cleaveland](#), 38 F.3d 1092, 1093 (9th Cir. 1995).

2) **Private Citizen Examples.** The following cases provide examples of when a private citizen may assist a law enforcement officer in the execution of a search warrant under [§ 3105](#):

a) [United States v. Robertson](#), 21 F.3d 1030, 1034 (10th Cir.), cert. denied, 513 U.S. 891 (1994) (Carjacking victim’s presence in defendant’s residence was permitted to help identify items covered by warrant);

- b) [United States v. Schwimmer](#), 692 F. Supp. 119, 124, 126-27 (E.D.N.Y. 1988)(Holding that government agents lawfully had computer expert help identify items that could be seized under warrant);
 - c) [United States v. Clouston](#), 623 F.2d 485, 486-87 (6th Cir. 1980)(per curiam)(Holding that government agents properly seized telephone company property identified by assisting telephone company agents, even though warrant did not list telephone company property).
3. **Rule 41(e)(2)(A) and (B) Provide the Requirements For When a Federal Search Warrant May Be Served.** The timeframes in which a search warrant must be served are outlined in [Rule 41\(e\)\(2\)\(A\) and \(B\)](#) of the Federal Rules of Criminal Procedures.
- a. **Federal Search Warrants Must Generally Be Served in the “Daytime.”** [Rule 41\(e\)\(2\)\(B\)](#) provides that a search warrant “must command the officer to execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time.”
 - 1) **“Daytime” Defined.** Pursuant to [Rule 41\(a\)\(2\)\(B\)](#), “the term ‘daytime’ means ‘the hours between 6:00 a.m. and 10:00 p.m. according to local time.’”
 - 2) **Search Warrants Involving Controlled Substances May Be Served Anytime.** [Title 21 U.S.C. § 879](#) provides that “a search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States Magistrate Judge issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.” Further, the Supreme Court has held that such cases “require no special showing for a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched at that time.” [Gooding v. United States](#), 416 U.S. 430, 458 (1974).
 - 3) **Nighttime Service of Search Warrants is Permitted If Reasonable Cause is Shown.** “Nighttime execution of a search warrant is permissible under [\[Rule 41\(e\)\(2\)\(B\)\]](#) ... if nighttime execution is specifically provided for in the warrant and is supported by ‘reasonable cause.’” [United States v.](#)

[Smith](#), 1991 U.S. App. LEXIS 19748 (6th Cir. 1991) (unpublished). “The federal rule requires explicit authorization for a night search, and ‘reasonable cause shown’ to the issuing magistrate justifying the unusual intrusion of a search at night.” [United States v. Searp](#), 586 F.2d 1117, 1121 (6th Cir. 1978). “The rule recognizes that there are times when a night search is necessary; if, for instance, execution would be impossible in the daytime or the property sought is likely to be destroyed or removed before daylight.” [Id.](#) Finally, “[t]he rule requires only some factual basis for a prudent conclusion that the greater intrusiveness of a nighttime search is justified by the exigencies of the situation.” [Id.](#) In determining whether a warrant may be executed in the nighttime, courts consider factors similar to those examined when determining the legality of a “no-knock” entry, including:

- a) **Danger or Futility;**
- b) **Inhibition of Effective Crime Investigation;**
and
- c) **Destruction of Evidence.**

See, e.g., [Colonna](#), 360 F.3d at 1176 (Nighttime execution of warrant upheld where suspect had prior extensive involvement with law enforcement; concerned citizen expressed fear that suspect would retaliate violently; and children lived in the vicinity of the residence); [United States v. Tucker](#), 313 F.3d 1259, 1265 (10th Cir. 2002)(Noting “the danger of destruction or removal of the evidence is sufficient reason for nighttime execution of a search warrant, in part because such circumstances could even constitute exigent circumstances for a search without a warrant”); [United States v. Stefanson](#), 648 F.2d 1231, 1236 (9th Cir. 1981)(Noting that, “when a search warrant is sought similar exigent circumstances justify an immediate nighttime execution of it”)

- b. **Rule 41(e)(2)(A) Provides That a Federal Search Warrant Must Be Served Within 10 Days of Issuance, Unless a Specific Period of Time is Noted in the Warrant.** [Rule 41\(e\)\(2\)\(A\)](#) provides that a search warrant must be served within one of two possible periods of time.

- 1) **Service May Be Required Within a Specified Time.**

First, the rule provides for service “within a specified time.” Thus, the search warrant itself may specify when service is required. See, e.g., [United States v. Gerber](#), 994 F.2d 1556 (11th Cir. 1993)(Search warrant obtained on September 12 was drafted to expire on September 13).

- 2) **Federal Search Warrants Must Be Served Within Ten (10) Days of Issuance.** If no specified time period for the search is contained in the warrant itself, the warrant must be served within a period “no longer than 10 days” from the date of issuance.
- 3) **Tracking Warrants.** Tracking warrants that authorize installation of a tracking device “must command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 calendar days” from the date the warrant was issued. Installation must be performed in the daytime, “unless the judge for good cause expressly authorizes installation at another time.” Rule 41(e)(2)(B)(i)-(ii).
- 4) **Violations of [Rule 41\(e\)\(2\)\(A\) or \(B\)](#) Generally Do Not Result in Suppression of Evidence.** If a violation of this portion of Rule 41 occurs, it will not automatically result in suppression of any evidence obtained during the execution of the search warrant. “Completing a search shortly after the expiration of a search warrant does not rise to the level of a constitutional violation and cannot be the basis for suppressing evidence seized so long as probable cause continues to exist, and the government does not act in bad faith.” [Gerber](#), 994 F.2d 1560.

4. **Locations On a Premise That May Be Searched.** In [United States v. Ross](#), 456 U.S. 798, 820-821 (1982), the Supreme Court discussed the scope of a search conducted pursuant to a premises search warrant:

“A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, the warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found.” [Id.](#)

See also [United States v. Evans](#), 92 F.3d 540, 543 (7th Cir.), cert. denied, 519 U.S. 1020 (1996)(“A warrant to search a house or

other building authorizes the police to search any closet, container, or other closed compartment in the building that is large enough to contain the contraband or evidence that they are looking for If they are looking for a canary's corpse, they can search a cupboard, but not a locket. If they are looking for an adolescent hippopotamus, they can search the living room or garage but not the microwave oven. If they are searching for cocaine, they can search a container large enough to hold a gram, or perhaps less")(citation omitted); [United States v. Nichols](#), 344 F.3d 793, 798 (8th Cir. 2003)("A lawful search extends to all areas and containers in which the object of the search may be found")(citations omitted).

NOTE: In the following sections, the rules regarding where a law enforcement officer may search are discussed. In addressing these issues with the students, it should be noted that, "[w]hile the purposes justifying a police search strictly limit the permissible extent of the search, the [Supreme] Court has also recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants." [Maryland v. Garrison](#), 480 U.S. 79, 87 (1987). See also [Brinegar v. United States](#), 338 U.S. 160, 176 (1949) ("Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability"); [Peterson v. Jensen](#), 371 F.3d 1199, 1203 (10th Cir. 2004) (Same).

- a. **Premise, Outbuildings, Curtilage.** "A search warrant for a residence may include all other buildings and other objects within the curtilage of that residence, even if not specifically referenced in the search warrant." [United States v. Cannon](#), 264 F.3d 875, 881 (9th Cir. 2001), cert. denied, 534 U.S. 1143 (2002). See also [United States v. Earls](#), 42 F.3d 1321, 1327 (10th Cir. 1994), cert. denied, 514 U.S. 1085 (1995)("The warrant authorizing the search of the premises including the residence on that particular premises permitted the search of the outbuildings within the curtilage of the residence"); [United States v. Bonner](#), 808 F.2d 864, 868 (1st Cir. 1986), cert. denied, 481 U.S. 1006 (1987)(Holding that "warrants authorizing a search of 'premises' at a certain address authorize a search of the buildings standing on that land").

- b. **Generally, Vehicles on the Property to Be Searched May**

Be Searched Pursuant to a Premises Search Warrant. “A warrant to search a house or other building authorizes the police to search any closet, container, or other closed compartment in the building that is large enough to contain the contraband or evidence that they are looking for.” [United States v. Percival](#), 756 F.2d 600, 612 (7th Cir. 1985). In this regard, “a car parked in a garage is just another interior container, like a closet or a desk.” [Evans](#), 92 F.3d at 543. Thus, “if ... the trunk or glove compartment is not too small to hold what the search warrant authorizes the police to look for, they can search the trunk and the glove compartment.” *Id.* In these types of cases, two issues generally arise: First, must the vehicle be located on the curtilage of the home? And second, does this apply to vehicles owned by visitors to the home?

- 1) **The Vehicle Must Be Located on the Curtilage to Fall Under the Authority of the Search Warrant.** To fall under the authority of a search warrant, the vehicle must be parked on the curtilage of the home where the warrant is being served. See [United States v. Sturmoski](#), 971 F.2d 452, 458 (10th Cir. 1992)(“A search warrant authorizing a search of a certain premises generally includes any vehicles located *within its curtilage* if the objects of the search might be located’ in those vehicles”)(emphasis added) (citation omitted); [United States v. Griffin](#), 827 F.2d 1108, 1114 (7th Cir. 1987), *cert. denied*, 485 U.S. 909 (1988); [United States v. Asselin](#), 775 F.2d 445, 447 (1st Cir. 1985); [United States v. Bulgatz](#), 693 F.2d 728, 730 n.3 (8th Cir. 1982), *cert. denied*, 459 U.S. 1210 (1983); [United States v. Napoli](#), 530 F.2d 1198, 1200-01 (5th Cir.), *cert. denied*, 429 U.S. 920 (1976).
- 2) **Ownership of the Vehicle May Also Play a Role in Determining Whether the Vehicle Falls Under the Authority of the Search Warrant.** In [United States v. Percival](#), 756 F.2d 600 (7th Cir. 1985), the Seventh Circuit Court of Appeals held that “a search warrant authorizing a search of particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises.” *Id.* at 612. However, in a later case, the court reinterpreted its decision in [Percival](#), holding that whether or not a vehicle on the curtilage may be searched pursuant to a premises warrant “is not tied to ownership.” [Evans](#), 92 F.3d at 543. See also [United States v. Cole](#), 628 F.2d 897, 899-900 (5th Cir.

1980), cert. denied, 450 U.S. 1043 (1981)(Truck of a third party who arrived during the execution of a search warrant was validly searched pursuant to the warrant). Taking a somewhat more restrictive view, the Tenth Circuit Court of Appeals In [United States v. Gottschalk](#), 915 F.2d 1459 (10th Cir. 1990), held "the scope of the warrant [includes] those automobiles either actually owned or under the control and dominion of the premises owner or, alternatively, those vehicles which appear, based on objectively reasonable indicia present at the time of the search, to be so controlled. Thus where the officers act reasonably in assuming that the automobile is under the control of the premises owner, it is included in the warrant." *Id.* at 1461. See also [United States v. Duque](#), 62 F.3d 1146, 1151 (9th Cir. 1995), cert. denied, 519 U.S. 819 (1996)("A search warrant authorizing a search of a particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises").

- c. **Generally, Containers on the Property to Be Searched May Be Searched Pursuant to a Premises Search Warrant.** "As a general proposition, any container situated within residential premises which are the subject of a validly-issued warrant may be searched if it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant." [United States v. Gray](#), 814 F.2d 49, 51 (1st Cir. 1987)(citations omitted). However, "special concerns arise when the items to be searched belong to visitors, and not occupants, of the premises." [United States v. Giwa](#), 831 F.2d 538, 544 (5th Cir. 1987)(citations omitted). In such situations, "a search of personal effects, such as briefcases, pocketbooks, portfolios, etc. 'does not clearly fall either within the realm of a personal search or a search of the premises.'" [Premises Known & Described as 55 West 47th Street, Suites 620 & 650 v. United States](#), 712 F. Supp. 437, 442 n.8 (S.D.N.Y. 1989)(citation omitted). In analyzing whether a visitor's container may be searched pursuant to a premises search warrant, the circuit courts have taken two different approaches. One approach focuses on the relationship between the visitor and the premises being searched, while the other focuses on the physical possession or location of the item in question.

- 1) **Some Courts Look to the Relationship Between the Visitor and the Place Searched to Determine if**

the Container Falls Under the Authority of the Warrant. Various courts have addressed the search of a visitor's container "by focusing primarily on the relationship between the person whose personal effects are searched and the place which is the subject of the search." [Giwa](#), 831 F.2d at 544. See also [United States v. Micheli](#), 487 F.2d 429, 431 (1st Cir. 1973)("In determining to what extent a recognizable personal effect not currently worn, but apparently temporarily put down, such as a briefcase, falls outside the scope of a warrant to search the premises, we would be better advised to examine the relationship between the person and the place"). Under this approach, the stronger the relationship between a visitor and the premises being searched, the more likely a search of the visitor's personal possessions would be permitted under the auspices of the warrant. See, e.g., [Gray](#) 814 F.2d at 51 (Search of defendant's jacket valid under the search warrant because "the defendant was not ... a casual afternoon visitor to the premises," but instead was "discovered in a private residence, outside of which a drug deal had just 'gone down,' at the unusual hour of 3:45 a.m."); [Micheli](#), 487 F.2d at 432 (Search of defendant's briefcase valid under the search warrant where defendant was not simply "a mere visitor or passerby who suddenly found his belongings vulnerable to a search of the premises," but instead "had a special relationship to the place, which meant that it could reasonably be expected that some of his personal belongings would be there"); [Giwa](#), 831 F.2d at 545 (Search of defendant's flight bag valid under the search warrant where defendant was not a "mere visitor" or "passerby," but instead was an "overnight visitor" to the apartment and appeared to be "more than just a temporary presence in the apartment"); [Hummel-Jones v. Strobe](#), 25 F.3d 647, 651-52 (8th Cir. 1994)(In finding search of visitor's bag unlawful, court noted that "[p]resence, standing alone, is not enough of a relationship to justify searching a visitor's bag"); [United States v. Branch](#), 545 F.2d 177, 182 (D.C. Cir. 1976)(Search of defendant's bag pursuant to search warrant found invalid where, *inter alia*, "he was apparently a mere visitor; his relationship to the premises was not known, but was at best the subject of speculation").

2) **Other Courts Look to the Physical Possession or Proximity of the Container to Decide Whether a Search is Permitted Pursuant to the Warrant.**

Other courts analyze the search of a visitor's container by looking to whether the item is in the physical possession of the visitor at the time of the search. If the item is in the physical possession of the visitor, then the bag becomes an extension of the person and is clearly outside the scope of a premises search warrant. Alternatively, if the item is not in the physical possession of the visitor, then it falls outside the scope of a "personal" search and may be searched pursuant to the warrant. See [Micheli](#), 487 F.2d at 431 ("A search of clothing currently worn is plainly within the ambit of a personal search and outside the scope of a warrant to search the premises"); [Branch](#), 545 F.2d at 182 (Search of defendant's bag pursuant to search warrant found invalid where, *inter alia*, "the bag in dispute was suspended from his shoulder"). [United States v. Teller](#), 397 F.2d 494, 497 (7th Cir.), cert. denied, 393 U.S. 937 (1968)(In upholding search of defendant's purse pursuant to search warrant, court held "it would be contrary to the facts to hold that a search of a purse lying upon a bed, where it was placed by its owner, constitutes a search of the person of that owner who had placed it there and left the room") (emphasis in original); [United States v. Johnson](#), 475 F.2d 977, 979 (D.C. Cir. 1973)(Search of defendant's purse was valid under search warrant because "it was not being 'worn' by [the defendant] and thus did not constitute an extension of her person so as to make the search one of her person") (emphasis in original).

5. **Generally, There is No Requirement to Present the Warrant Prior to Beginning the Search.** "Law enforcement officers are not constitutionally required to present a copy of the search warrant prior to commencing a search, so long as the previously issued warrant is presented before the officers vacate the premises." [United States v. Hepperle](#), 810 F.2d 836, 839 (8th Cir. 1987). See also [Frisby v. United States](#), 79 F.3d 29, 32 (6th Cir. 1996)("The Fourth Amendment does not necessarily require that government agents serve a warrant, or an attachment thereto, prior to initiating a search or seizing property"); [United States v. Bonner](#), 808 F.2d 864 (1st Cir. 1986), cert. denied, 481 U.S. 1006 (1987). However, the Ninth Circuit Court of Appeals has enunciated a different standard. See [United States v. Gantt](#), 194 F.3d 987, 1003 (9th Cir.

1999) (holding “if [Rule 41\(d\)](#) does not ‘invariably’ require service before the search, then [Rule 41\(d\)](#) must usually require service before the search”).

6. **A Law Enforcement Officer May Answer a Ringing Telephone During the Execution of a Search Warrant.** A law enforcement officer may answer a ringing telephone without violating the Fourth Amendment if he is lawfully on the premises executing a search warrant. As noted by one court: “An agent’s conduct in answering a telephone while lawfully on the premises is not violative of the Fourth Amendment.” [United States v. Passarella](#), 788 F.2d 377, 380 (6th Cir. 1986). Accordingly, “where the officers were lawfully upon the premises and answered the telephone, any incriminating evidence acquired from those telephone calls is not subject to suppression on grounds of constitutionally protected privacy concerns.” *Id.* at 382. See [United States v. Vadino](#), 680 F.2d 1329 (11th Cir. 1982); [United States v. Gallo](#), 659 F.2d 110 (9th Cir. 1981); [United States v. Campagnuolo](#), 592 F.2d 852 (5th Cir. 1979); [United States v. Fuller](#), 441 F.2d 755 (4th Cir.), *cert. denied*, 404 U.S. 830 (1971).
7. **A Law Enforcement Officer May Temporarily Seize Handguns Found During the Execution of a Search Warrant.** When, during the execution of a search warrant, a handgun is found that is not obviously contraband, the handgun may be temporarily seized for safety reasons. See, e.g., [United States v. Bishop](#), 338 F.3d 623, 628 (6th Cir. 2003), *cert. denied*, 540 U.S. 1206, 124 S. Ct. 1479 (2004) (“We hold that a police officer who discovers a weapon in plain view may at least temporarily seize that weapon if a reasonable officer would believe, based on specific and articulable facts, that the weapon poses an immediate threat to officer or public safety”); [United States v. Malachese](#), 597 F.2d 1232, 1234 (8th Cir. 1979), *cert. denied*, 444 U.S. 902 (1979) (“Although the incriminating nature of the handgun may not have been immediately apparent to the investigating officers, its temporary seizure, unloading, and retention by a responsible officer ... seem[ed] a reasonable precaution to assure the safety of all persons on the premises during the search”); [United States v. Miles](#), 82 F. Supp. 2d 1201, 1209 (D. Kan. 1999), *aff’d*, 2001 U.S. App. LEXIS 16160 (10th Cir. 2001) (“Once inside the apartment, either pursuant to a consensual search or the valid execution of an arrest warrant, the officers were free to seize, at least momentarily for their safety and the safety of others in the area, the firearm which was in plain view”); [United States v. Pillow](#), 842 F.2d 1001, 1004 (8th Cir. 1988) (Temporary seizure of weapon reasonable where “the gun was in plain view and subject to seizure as a reasonable safety precaution”); [United States v. Timpani](#), 665 F.2d 1, 5 (1st Cir. 1981) (Removal of weapons to vehicle while search

warrant was obtained was reasonable).

8. **A Suspect Ordinarily Has No Right to Have an Attorney Present During the Execution of a Search Warrant.** A suspect does not ordinarily have a right to have an attorney present during the execution of a search warrant. See [United States v. Timpani](#), 665 F.2d 1, 3 (1st Cir. 1981). However, in certain circumstances, such as when the suspect is arrested or “judicial proceedings” have been initiated, a Fifth or Sixth Amendment right to counsel might accrue. [Id.](#) (citation omitted).
9. **A Law Enforcement Officer May Use a Reasonable Amount of Force When Executing a Search Warrant.** “Case law has indicated that at least in certain circumstances officers lawfully may handcuff the occupants of the premises while executing a search warrant.” [Torres v. United States](#), 200 F.3d 179, 185 (3d Cir. 1999). “On the other hand, handcuffing may be excessive in certain circumstances.” [Id.](#) Whether the force used was reasonable is determined by looking at the “totality of the circumstances.” Among the factors considered by the courts in making this determination are:
 - a. **The Severity of the Crime**, [Graham](#), 490 U.S. at 396;
 - b. **Whether the Suspect Poses An Immediate Threat to the Safety of the Officers or Others**, [Id.](#);
 - c. **Whether the Suspect is Actively Resisting Arrest or Attempting to Evade Arrest By Flight**, [Id.](#);
 - d. **How Many Individuals the Officers Confronted**, [Mellott v. Heemer](#), 161 F.3d 117, 122 (3d Cir. 1998), [cert. denied](#), 526 U.S. 1160 (1999);
 - e. **Whether the Physical Force Applied Was of Such An Extent As to Lead to Injury**, [Id.](#);
 - f. **Whether the Suspect Was Elderly, a Child, or Suffering From Illness or Medical Disability**, [Franklin v. Foxworth](#), 31 F.3d 873, 876 (9th Cir. 1994)(“Detentions, particularly lengthy detentions, of the elderly, or of children, or of individuals suffering from a serious illness or disability raise additional concerns”).
10. **Destruction of Property During a Search is Not Necessarily a Violation of the Fourth Amendment.** As a general rule, “any destruction of property that is not reasonably necessary to the performance of the law enforcement officer’s duties constitutes an unreasonable seizure under the Fourth Amendment.” [Destruction of Property as Violation of Fourth Amendment](#), 98 A.L.R.5th 305 (2002). Suffice it to say, when law enforcement officers execute search warrants, they must occasional damage property in order to

conduct a complete and thorough search. Accordingly, “the destruction of property during a search does not necessarily violate the Fourth Amendment.” *Id.* Instead, “only unnecessarily destructive behavior, beyond that necessary to execute a warrant effectively, violates the Fourth Amendment.” [Liston v. County of Riverside](#), 120 F.3d 965, 979 (9th Cir. 1997).

11. **Rule 41(f)(1)(B) Requires That Law Enforcement Officers Prepare an Inventory of Any Property Seized.** “An officer present during the execution of the warrant must prepare and verify an inventory of any property seized.” [Rule 41\(f\)\(2\)](#).
 - a. **Inventory Must Be Prepared In the Presence of Another Officer or the Person Whose Property is Being Seized.** The officer who prepares the inventory “must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken.” [Rule 41\(f\)\(2\)](#).
 - b. **If Neither Present, Inventory Must Be Prepared in the Presence of One Other Credible Person.** If neither another officer or the person whose property is being seized “is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.” [Rule 41\(f\)\(1\)\(B\)](#).
12. **Rule 41(f)(1)(C) Requires That Law Enforcement Officers Provide a Copy of the Warrant and the Receipt (Inventory).** [Rule 41\(f\)\(1\)\(C\)](#) provides, in pertinent part, that “the officer executing the warrant must:
 - a. **Give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or**
 - b. **Leave a copy of the warrant and receipt at the place where the officer took the property.**”
13. **“Ministerial” Violations of Rule 41(f)(1)(C) Do Not Require Suppression of the Evidence.** “Courts have frequently held ... that not all violations of [Rule 41(f)(1)(C), formerly [Rule 41\(f\)\(3\)](#),] render a search invalid. ‘Ministerial’ violations of [the Rule]... require suppression of evidence only if the defendant can demonstrate that he was prejudiced by the violation.” [United States v. Wyder](#), 674 F.2d 224, 226 (4th Cir.), *cert. denied*, 457 U.S. 1125 (1982). Examples of “ministerial” violations include a claim that the government had not returned the warrant to the magistrate judge within the prescribed time period, [United States v. Smith](#), 914 F.2d 565, 568 (4th Cir. 1990), *cert. denied*, 498 U.S. 1101 (1991), and a

“scrivener’s” error contained in the copy of the search warrant provided to the defendant, [Wyder](#), 674 F.2d at 225-226.

14. **Suppression is Required Where Actual Prejudice Occurs or There is Intentional Disregard of the Rule.** While “ministerial” violations of [\[Rule 41\(f\)\(1\)\(C\)\]](#) will not result in the suppression of evidence, this sanction is appropriate in circumstances where a constitutional violation has occurred. “[U]nless a clear constitutional violation occurs, noncompliance with [Rule 41](#) requires suppression of evidence only where, (1) there was ‘prejudice’ in the sense that the search might not have occurred or would not have been so abrasive if the rule had been followed, or (2) there is evidence of intentional and deliberate disregard of a provision in the Rule.” [United States v. Chaar](#), 137 F.3d 359, 362 (6th Cir. 1998)(citation omitted). See also [Frisby](#), 79 F.3d at 32 (“Although the procedural steps enumerated in [\[Rule 41\(f\)\(1\)\(C\)\]](#) are important and should not be disregarded, they are ministerial and ‘absent a showing of prejudice, irregularities in these procedures do not void an otherwise valid search’”(citation omitted); [Nichols](#), 344 F.3d at 799 (“Where executing officers fail to abide by the dictates of [Rule 41](#), suppression is only required if a defendant can demonstrate prejudice”).
15. **Rule 41(f)(1)(D) Also Requires the Warrant to be Returned to the Issuing Magistrate.** Following the issuance and execution of a search warrant, [Rule 41\(f\)\(1\)\(D\)](#) requires that “the officer executing the warrant must promptly return it - together with a copy of the inventory - to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.” See also [Rule 41\(e\)\(2\)](#)(Providing the warrant must “designate the magistrate judge to whom it must be returned”). [Rule 41\(f\)\(3\)](#) states, however, that “[u]pon the government’s request, a magistrate judge – or if authorized by [Rule 41\(b\)](#), a judge of a state court of record – may delay any notice required by this rule if the delay is authorized by statute.” Examples of statutes that permit delayed notice are [Rule 41\(f\)\(2\)\(C\)](#) (warrants for electronic tracking devices), and 18 U.S.C. §3103a(b) (“sneak and peek” or “covert entry” warrants).

P. EPO #16: IDENTIFY THE SCOPE AND PURPOSE OF A PROTECTIVE SWEEP

1. **General Rule – Protective Sweeps are Permitted Where a Law Enforcement Officer has Reasonable Suspicion to Believe the Residence Harbors a Third Party Who Could Pose a Danger to the Officer.** Prior to the Supreme Court’s decision in [Chimel v. California](#), 395 U.S. 752 (1969), law enforcement officers were

permitted to search the entire premises where an arrest occurred as an incident of that arrest. [Harris v. United States](#), 331 U.S. 145 (1947). However, [Chimel](#) restricted the scope of a search incident to arrest in a dwelling to the arrestee's person and the area "within his immediate control." [Chimel](#), 395 U.S. at 763. Two decades later, in [Maryland v. Buie](#), 494 U.S. 325 (1990), the Supreme Court expanded the scope of a search incident to arrest in a dwelling and introduced what have become known as "protective sweeps."

2. **"Protective Sweeps" Defined.** A "protective sweep" is a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." [Buie](#), 494 U.S. at 327.
3. **Several Circuit Courts Do NOT Require An Arrest For a Protective Sweep To Be Valid.** Several federal courts have found that there is no "across-the-board, hard and fast *per se* rule that a protective sweep can be valid only if conducted incident to an arrest." [United States v. Gould](#), 364 F.3d 578, 581 (5th Cir. 2004)(emphasis in original). These courts have recognized "in the in-home context it appears clear that even without an arrest other circumstances can give rise to equally reasonable suspicion of equally serious risk of danger of officers being ambushed by a hidden person as would be the case were there an arrest." *Id.* at 584. See, e.g., [United States v. Taylor](#), 248 F.3d 506, 513 (6th Cir.), cert. denied, 534 U.S. 981 (2001)(Where government argued nothing in [Buie](#) decision indicated that an arrest is a mandatory prerequisite for conducting a protective sweep of the area, and that [Buie](#) was based on investigative stop cases, court found these arguments persuasive); [United States v. Garcia](#), 997 F.2d 1273, 1282 (9th Cir. 1993)(Court upheld a protective sweep in a consent entry case where no arrest was made until after the sweep discovered guns in plain view); [United States v. Patrick](#), 959 F.2d 991, 996-997 (D.C. Cir. 1992)(Where officers had consent to enter apartment, they "were lawfully on the premises" and thus "were authorized to conduct a protective sweep based on their reasonable belief that one of its inhabitants was trafficking in narcotics." According to the court: "We think the holding in [Buie](#), notwithstanding the search there was conducted pursuant to a warrant and not consent, supports the police search here"); [United States v. Koubriti](#), 199 F. Supp. 2d 656, 662 (D. Mich. 2002)("While the Court acknowledges that some circuits appear to take this restrictive view of the holding in [Buie](#)... the Sixth Circuit has expressly rejected such a narrow construction")... *But see* [United States v. Davis](#), 290 F.3d 1239, n.4 1242 (10th Cir. 2002)(In finding protective sweep impermissible because there was no arrest, court quoted the first sentence of [Buie](#); court also found sweep

objectionable apparently because it was not narrowly confined to a cursory visual inspection of places where a person might be hiding, as required by [Buie](#)).

4. **There are Two Different Kinds of Protective Sweeps.** The Supreme Court has identified two types of protective sweeps. The first, which requires no articulable suspicion, involves looking in people-sized places immediately adjoining the place of arrest. The second, which requires articulable suspicion, allows a greater intrusion into the premises. [Maryland v. Buie](#), 494 U.S. 325 (1990); see also [United States v. Ford](#), 56 F.3d 265, 268-69 (D.C. Cir. 1995) (Noting the Supreme Court has “identified two situations in which protective sweeps are justified, and two types of protective sweeps,” with the “first involv[ing] ‘looking in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched,’ and the second going ‘beyond that’”);

a. **Three Requirements to Conduct an “Automatic” Protective Sweep.**

- 1) **First, the Officer May Only Look in Places Immediately Adjoining the Place of Arrest.** In [Maryland v. Buie](#), 494 U.S. 325 (1990), the Supreme Court held that once an arrestee is located and the arrest is made, “as a precautionary matter and without probable cause or reasonable suspicion, [officers may] look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.”
- 2) **Second, the Officer May Only Look in Places Where Persons Could Be Located.** It should be remembered that a “protective sweep” is not a full search of a dwelling. “Rather, such a search may only encompass those spaces where an individual might be found.” [United States v. Blue](#), 78 F.3d 56, 61 (2d Cir. 1996)(Search of mattress springs did not fall within the scope of protective sweep because “the nature and scope of the intrusion could not be justified by a reasonable, articulable suspicion that the mattress concealed a dangerous person”). See also [Ford](#), 56 F.3d at 270 (Search under mattress and behind window shades outside the scope of a permissible protective sweep because persons could not reasonably hide under mattress or behind window shades); [United States v. Lauter](#), 57 F.3d 212, 216-17 (2d Cir. 1995)(Officer “was justified in looking in the space between the bed and the wall, as a person

certainly could have been hiding in that location”); [United States v. Tucker](#), 1999 U.S. App. LEXIS 1480 (10th Cir. 1999) (unpublished) (During protective sweep, officers “are entitled to look in a closet or open a bathroom door or look behind a bulky piece of furniture”).

- 3) **Third, the Protective Sweep May Last No Longer Than is Necessary to Dispel the Danger.** In [Buie](#), the Court ruled that a protective sweep may “last no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” [Buie](#), 494 U.S. at 336. Although there is no bright-line rule on how long a protective sweep may last, it is important to remember that they are generally measured in terms of minutes, rather than hours. Thus, the longer it takes to complete a protective sweep, the more likely a court would find the sweep excessive. See, e.g., [United States v. Richards](#), 937 F.2d 1287, 1292 (7th Cir. 1991)(In upholding protective sweep, court stated: “[The officer] did not search through drawers or dawdle in each room looking for clues. He moved briefly through two bedrooms, the bathroom and kitchen. When satisfied that the apartment was secure he returned to the living room and called for assistance. The Court in [Buie](#) requires no more”); [United States v. Burrows](#), 48 F.3d 1011, 1017 (7th Cir.), cert. denied, 515 U.S. 1168 (1995)(Protective sweep upheld where “the search of ... four bedrooms and a linen closet, which required the officers to force four locked doors, took no more than five minutes, an interval compatible with the officers' legitimate purpose”); [United States v. Hromada](#), 49 F.3d 685, 690 (11th Cir. 1995) (Protective sweep upheld where “the SRT opened doors only to areas large enough to harbor a person. There is no evidence that the officers opened drawers or that the sweep of the house was overextensive. In fact, the sweep was short; it lasted only about a minute”); [United States v. Smith](#), 131 F.3d 1392, 1396 (10th Cir. 1997), cert. denied, 522 U.S. 1141 (1998)(Protective sweep upheld where it was properly limited in scope and “its duration was between thirty and forty seconds, well within the time it took to arrest Mr. Snider and depart”). But see, e.g., [Hogan](#), 38 F.3d at 1150 (Court found a two-hour protective

sweep impermissible because it appeared to be “a fishing expedition for evidence” and because it “greatly exceeded the permissible scope of a protective sweep”); [United States v. Noushfar](#), 140 F.3d 1244, 1245 (9th Cir. 1996)(Protective sweep “exceeded the limits of a [Buie](#) sweep in both time and scope” where Customs agents “went through the apartment for more than a half-hour”); [United States v. Akrawi](#), 920 F.2d 418, 420-421 (6th Cir. 1990)(Protective sweep found impermissible because, *inter alia*, it lasted forty-five minutes).

b. **Additional Requirement to Conduct an “Extended” Protective Sweep.** In order to conduct an extended protective sweep, an extra requirement must be satisfied.

1) **Reasonable Suspicion that Other Dangerous Persons are Present.** To search beyond the area immediately adjoining the place of arrest, a law enforcement officer must have reasonable suspicion “that the area to be swept harbors an individual posing a danger to those on the arrest scene.” [Buie](#), 494 U.S. at 334. “The officer’s belief must be based on specific and articulable facts.” [United States v. Cunningham](#), 133 F.3d 1070, 1073 (8th Cir.), *cert. denied*, 523 U.S. 1131 (1998). *See, e.g., United States v. Paradis*, 351 F.3d 21, 29 (1st Cir. 2003)(“The government’s protective sweep argument fails because the officers had no reason to believe that there might be an individual posing a danger to the officers or others”); [United States v. Hogan](#), 38 F.3d 1148, 1150 (10th Cir. 1994), *cert. denied*, 514 U.S. 1008 (1995) (Protective sweep of murder suspect’s home after his arrest was not justified when “there was no indication that the officers were in danger from a hidden accomplice”). In making a determination on where reasonable suspicion exists, a totality of the circumstances test is used. [United States v. Burrows](#), 48 F.3d 1011, 1016 (7th Cir.), *cert. denied*, 515 U.S. 1168 (1995). Some factors that courts have found justify a protective sweep include:

a) **Nervousness.** A suspect’s nervousness may be one factor that can justify a protective sweep. *See, e.g., United States v. Cash*, 378 F.3d 745, 748 (8th Cir. 2004); [Taylor](#), 248 F.3d at 514 (One factor justifying a protective sweep was the occupant’s nervous demeanor).

- b) **Furtiveness.** A suspect's furtiveness may also be a factor justifying a protective sweep. See, e.g., [Cash](#), 378 F.3d at 748 ("Since an officer confronting a nervous and furtive suspect on the street has an articulable reason to be concerned for his safety and may therefore conduct a [Terry](#) stop and frisk, it follows that an officer arresting a nervous and furtive suspect in an unfamiliar residence has an articulable reason to be concerned for his safety and may therefore conduct a [Buie](#) sweep"); [United States v. Meza-Corrales](#), 183 F.3d 1116, 1124 (9th Cir. 1999)(One factor justifying a protective sweep was the occupants' furtive actions).
- c) **Noises Suggesting Additional Persons Are Present.** Where an officer hears noises indicating that additional persons are present at the residence, this factor may justify a protective sweep. See, e.g., [Taylor](#), 248 F.3d at 514 (Protective sweep justified, in part, because officers "had heard noises suggesting that more than one person was present in the apartment").
- d) **Circumstantial Evidence Suggesting Criminal Associates Are Present.** In [United States v. Stover](#), 474 F.3d 904 (6th Cir. 2007), the fact that police identified a car parked in the driveway of defendant's duplex registered to a local criminal who did not live at defendant's address was sufficient to justify a protective sweep.
5. **Evidence Observed in Plain View While Lawfully Performing a Protective Sweep is Admissible.** "The seizure of obviously incriminating evidence found during a protective sweep is constitutionally permissible pursuant to the plain view doctrine." [United States v. Waldrop](#), 404 F.3d 365, 369 (5th Cir. 2005). See also [United States v. Munoz](#), 150 F.3d 401, 411 (5th Cir. 1998), cert. denied, 525 U.S. 1112 (1999)("Since the arrest warrant places them in a lawful position to view the incriminating object - by authorizing their presence in the residence - and the search for the suspect in places where he might be hiding establishes their lawful right of access to it, they can seize it without a search warrant"); [United States v. Weems](#), 322 F.3d 18, 22 (1st Cir.), cert. denied, 540 U.S. 892 (2003)(Upholding plain view seizure made during

protective sweep).

6. **Based Upon Reasonable Suspicion, An Officer May Conduct a Protective Sweep Inside the Premises If the Arrest Occurs Outside.** There is no bright-line rule that prohibits law enforcement officers from performing protective sweeps of premises when an arrest occurs outside of that building. “Although ... [Buie](#) involved an in-home arrest, courts have recognized that the same exigent circumstances present in [Buie](#) can sometimes accompany an arrest just outside of a residence or other structure.” [Cavely](#), 318 F.3d at 1002. “The fact that the arrest takes place outside rather than inside the home affects only the inquiry into whether the officers have a reasonable articulable suspicion that a protective sweep is necessary by reason of a safety threat.” [United States v. Colbert](#), 76 F.3d 773, 776-777 (6th Cir. 1996). Thus, “depending on the circumstances, the exigencies of a situation may make it reasonable for officers to enter a home without a warrant in order to conduct a protective sweep.” [Cavely](#), 318 F.3d at 1002. See, e.g., [Colbert](#), 76 F.3d at 776-77 (Protective sweep for arrest just outside home may be justified); [United States v. Lawlor](#), 406 F.3d 37, 41 (1st Cir. 2005) (Court “accept[ed] the position that a protective sweep may be conducted following an arrest that takes place just outside the home, if sufficient facts exist that would warrant a reasonably prudent officer to fear that the area in question could harbor an individual posing a threat to those at the scene”); [United States v. Soria](#), 959 F.2d 855 (10th Cir.), cert. denied, 506 U.S. 882 (1992)(Police search of nearby auto body shop after arresting the owner was a valid protective sweep); [United States v. Wilson](#), 306 F.3d 231, 238 (5th Cir. 2002). (Sweep reasonable where suspect arrested just outside entry); [United States v. Henry](#), 48 F.3d 1282, 1284 (D.C. Cir. 1995)([Buie](#) rationale applicable to arrest just outside home); [United States v. Kimmons](#), 965 F.2d 1001 (11th Cir. 1992). As with an extended protective sweep, the officers must have reasonable suspicion to believe that the area to be swept harbors an individual who poses a danger to those at the arrest scene. As one court has noted: “If the exigencies to support a protective sweep exist, whether the arrest occurred inside or outside the residence does not affect the reasonableness of the officer's conduct. A bullet fired at an arresting officer standing outside a window is as deadly as one that is projected from one room to another. The likelihood of the destruction of evidence is the same whether the arrest is indoors or in an outside area within the sight or hearing range of an accomplice within the residence.” [United States v. Hoyos](#), 892 F.2d 1387, 1397 (9th Cir. 1989), cert. denied, 498 U.S. 825 (1990), *overruled on other grounds by* [United States v. Ruiz](#), 257 F.3d 1030 (9th Cir. 2001). See also, [United States v. Oguns](#), 921 F.2d 442, 446 (2d Cir. 1990) (Noting that

protective sweep inside home is lawful even where arrest occurred outside “if the arresting officers had ‘(1) a reasonable belief that third persons [were] inside, and (2) a reasonable belief that the third persons (were) aware of the arrest outside the premises so that they might destroy evidence, escape or jeopardize the safety of the officers or the public’”); [United States v. Arch](#), 7 F.3d 1300, 1303 (7th Cir. 1993), *cert. denied*, 510 U.S. 1139 (1994) (dicta) (“Even cases that countenance protective sweeps when an arrest is made just outside the home do so on the theory that the officers are as much at risk from an unexpected assault on the defendant's doorstep as they might be inside the home”); [United States v. Jackson](#), 700 F.2d 181, 189 (5th Cir.), *cert. denied*, 464 U.S. 842 (1983) (“Arresting officers have a right to conduct a quick and cursory check of the arrestee's lodging immediately subsequent to arrest - even if the arrest is near the door but outside the lodging - where they have reasonable grounds to believe that there are other persons present inside who might present a security risk”).

Q. EPO #17: IDENTIFY CIRCUMSTANCES IN WHICH PERSONS ON THE PREMISES MAY OR MAY NOT BE SEARCHED FOR EVIDENCE OR FRISKED DURING THE EXECUTION OF A PREMISES WARRANT

1. **General Rule - Occupants May Be Detained During the Execution of a Premises Search Warrant for Contraband.** “A warrant to search for contraband found on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.” [Michigan v. Summers](#), 452 U.S. 692, 705 (1981). *See also* [Muehler v. Mena](#), 544 U.S. 93 (2005)(same). This is sometimes referred to as the “[Summers](#)’ Doctrine.” “Such detentions are appropriate ... because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial.” [Muehler](#), 544 U.S. at 98 (*citing* [Summers](#), 452 U.S. at 701-05).

NOTE: The rule outlined in [Summers](#) also applies when the search warrant is being executed on a business or corporation. *See, e.g.,* [United States v. Wallace](#), 323 F.3d 1109, 1111 (8th Cir. 2003)(Noting that, within a business context, “[t]he initial rounding up and temporary detention of employees” would be justified under [Summers](#)).

2. **There Are Three Justifications for the “Summers’ Doctrine”.** In [Summers](#), *supra*, the Supreme Court noted three distinct justifications for this limited type of seizure.
 - a. **Prevention of Flight In Case Incriminating Evidence is Found.** First, there is a “legitimate law enforcement interest

in preventing flight in the event that incriminating evidence is found." [Summers](#), 452 U.S. at 702.

b. **Minimizing Risk of Harm to the Officers Executing the Warrant.** Second, there is a societal interest "in minimizing the risk of harm to [the] officers" who are serving the search warrant. [Id.](#) This interest is served where "the officers routinely exercise unquestioned command of the situation." [Id.](#) at 703; see also [Los Angeles County v. Rettele](#), 127 S. Ct. 1989 (2007) ("[W]hen officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, the Fourth Amendment is not violated.")

c. **Orderly Completion of the Search.** Finally, "the orderly completion of the search may be facilitated if the occupants of the premises are presented. Their self-interest may induce them to open locked doors or locked containers to avoid the use of force that is not only damaging to property but may also delay the completion of the task at hand." [Id.](#) at 703.

3. **All Three Justifications for [Summers](#) Need Not Be Met to Justify a Temporary Detention.** Of course, not all of these interests must be met to justify a temporary detention under [Summers](#). See [Leveto v. Lapina](#), 258 F.3d 156, 167 n.5 (3rd Cir. 2001) ("A detention may be reasonable even if fewer than all of [[Summers](#)] law enforcement interests are not present") (citation omitted); [United States v. Bohannon](#), 225 F.3d 615, 617 (6th Cir. 2000) (Same). Further, an "officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.'" [Muehler](#), 544 U.S. 93, 98 (citation omitted).

4. **Reasonable Force May Be Used In Detaining a Suspect Under [Summers](#).** "Inherent in [Summers](#)' authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention." [Muehler](#), 544 U.S. at 98-99 (Upholding officers' use of handcuffs to detain occupant of home during execution of search warrant for weapons and gang membership); but see [Meredith v. Erath](#), 342 F.3d 1057 (9th Cir. 2003) (absent justifiable circumstances, the detention of a person in handcuffs during the execution of a search warrant violates the Fourth Amendment. Using handcuffs to detain a subject who was loud and demanding, but who was not threatening, did not attempt to flee, and did not attempt to impede the officers' search for evidence of tax fraud was unreasonable). Further, "the risk of harm to officers and occupants is minimized 'if the officers routinely exercise unquestioned command of the situation.'" [Id.](#) (citing [Summers](#), 452 U.S. at 703).

5. **The Length of a Detention Under [Summers](#).** The Supreme Court commented in [Summers](#) that “possibly a prolonged detention ... might lead to a different conclusion in an unusual case” [Id.](#) at 705 n.21. However, the Supreme Court did not specify how long the detention at issue lasted in that case. Nonetheless, “[t]he opinion of the Michigan Court of Appeals in the same case ... suggests that the detention was not short: [Summers](#) was detained during the time it took a police officer ‘to search the whole house’ and find heroin under a bar in the basement.” [Daniel v. Taylor](#), 808 F.2d 1401, 1405 (11th Cir. 1986). Accord [Leveto v. Lapina](#), 258 F.3d 156, 173 (3rd Cir. 2001) (“While the [[Summers](#)] Court did not extend this rule to cases ... featuring prolonged detention, the Court also did not foreclose such extensions. ... Moreover, lower courts suggested that rather lengthy detentions would fall within [Summers](#)’ purview.”); [United States v. Rowe](#), 694 F. Supp. 1420, 1424 (N.D. Cal. 1988) (“Although the [Summers](#) Court did not define the duration of permissible detention, it apparently contemplated that occupants could be detained long enough for police to complete extensive searches.”). Further, “[s]ince the dissenters in [Summers](#) expressly raised the point, the [Summers](#) majority apparently appreciated that the concept of detention during searches of premises entails the prospect of detentions lasting several hours.” [Daniel](#), 808 F.2d at 1405. See also [Maryland v. Buie](#), 494 U.S. 325, 334 (1990) (“[Summers](#) held that a search warrant for a house carries with it the authority to detain its occupants *until the search is completed*.”) (emphasis added). Unfortunately, “the law is ambiguous as to when detention in conjunction with a lawful, premises search becomes impermissible,” [Daniel](#), 808 F.2d at 1405. However, in at least one recent case, the Supreme Court upheld a detention of 2-3 hours. See [Muehler](#), 544 U.S. at 100 (detention upheld where “case involved the detention of four detainees by two officers during a search of a gang house for dangerous weapon”). See also [Leveto](#), 258 F.3d at 172-74 (eight-hour detention during execution of search warrant of veterinarian for evidence relating to tax offenses found unreasonable, but officers entitled to qualified immunity because “breadth of the [Summers](#)’ rule was highly uncertain”); [Daniel](#), 808 F.2d 1403-05 (finding defendant agents entitled to qualified immunity where law was uncertain as to permissible length of detention, in this case, two hours and forty-five minutes).
6. **Application of the “[Summers](#)’ Doctrine” to Warrants to Search for “Evidence.”** In [Summers](#), the search warrant at issue was for contraband (narcotics). Whether the rule introduced in [Summers](#) applies to search warrants to look for mere evidence of a crime is uncertain.. The Supreme Court explicitly declined to address this issue, noting, “We do not decide whether the same result would be

justified if the search warrant merely authorized a search for evidence." [Id.](#) at 705 n.20. Additionally, the circuit courts of appeal have reached inconsistent results on this issue.

- a. **Some Courts Distinguish Between “Contraband” and “Mere Evidence” For Purposes of [Summers](#).** Further, the circuit courts of appeal have reached inconsistent results on this issue. Some courts have found the distinction between “contraband” and “evidence” to be significant. As noted by one court:

“A primary law enforcement interest served by such detention is the prevention of flight in the event that incriminating evidence is found during the search. In this connection, the distinction between searches for contraband and searches for evidence is material. It is not uncommon for a search for contraband to produce items that justify an immediate arrest of the owner or resident of these premises, and a person who anticipates that a search may imminently result in his or her arrest has a strong incentive to flee. By contrast, a search for evidence – particularly complicated documentary evidence – is much less likely to uncover items that lead to an immediate arrest. Thus, even if the search is successful the suspect may well remain at liberty for some time until the evidence is examined and an indictment is obtained. As a result, the incentive to flee is greatly diminished.”

[Leveto](#), 258 F.3d at 168. See also [Daniel](#), 808 F.2d at 1404 (Holding that [Summers](#) Doctrine “is not applicable to a search for evidence, because the existence of mere evidence, as opposed to contraband, on the premises does not suggest that a crime is being committed on the premises”).

- b. **Some Courts Have NOT Distinguished Between “Contraband” and “Mere Evidence” For Purposes of [Summers](#).** Alternatively, some courts have not distinguished for purposes of [Summers](#) between search warrants for contraband and those for evidence. See, e.g., [Rowe](#), 694 F. Supp. at 1424-25 (Court applied the [Summers](#) Doctrine to a search for evidence).

7. **To Detain a Suspect Under [Summers](#), the Suspect’s Proximity to the Residence Being Searched is a Factor.** “The proximity between an occupant of a residence and the residence itself may be relevant in deciding whether to apply [Summers](#), but it is by no means controlling.” [United States v. Cavazos](#), 288 F.3d 706, 712

(5th Cir. 2002). See also [United States v. Cochran](#), 939 F.2d 337, 339 (6th Cir. 1991), cert. denied, 502 U.S. 1093 (1992) (“[Summers](#) does not impose upon police a duty based on geographic proximity”); [United States v. Vite-Espinoza](#), 342 F.3d 462, 468 (6th Cir. 2003)(Detention of individuals found in “backyard of a drug and counterfeit document distribution facility” legally detained under [Summers](#)).

- a. **The Farther a Suspect is From the Residence, the Less Likely [Summers](#) Will Apply.** Nonetheless, the farther a suspect is from the residence to be searched, the less likely the detention would be upheld under [Summers](#). See, e.g., [United States v. Sherrill](#), 27 F.3d 344, 346 (8th Cir.), cert. denied, 513 U.S. 1048 (1994) (Refusing to extend [Summers](#) to stop of defendant’s vehicle one block from home); [United States v. Edwards](#), 103 F.3d 90, 93-94 (10th Cir. 1996) (Refusing to apply [Summers](#) to a defendant who was seized three blocks away from the search).
- b. **[Summers](#) Has Been Applied to the Detention of Persons Who Approach a Residence During the Execution of a Search Warrant.** Where an individual approaches and attempts to enter a residence where a search warrant is being executed, [Summers](#) may provide a justification for detaining that person. See, e.g., [Bohannon](#), 225 F.3d at 617 (Search and seizure of two men who attempted to enter residence during execution of a drug warrant justified under [Summers](#), because of need to protect officers’ safety); [Baker v. Monroe Township](#), 50 F.3d 1186, 1192 (3d Cir. 1995) (“Although [Summers](#) itself only pertains to a resident of the house under warrant, it follows that the police may stop people coming to or going from the house if police need to ascertain whether they live there”); [Burchett v. Kiefer](#), 310 F.3d 937, 944 (6th Cir. 2002)(Holding that, “officers act within their [Summers](#) powers when they detain an individual who approaches a property being searched pursuant to a warrant, pauses at the property line, and flees when the officers instruct him to get down. Although this reaches beyond [Summers](#) ‘occupants’ language, it is consistent with the policies that [Summers](#) identified”); [United States v. Patterson](#), 885 F.2d 483, 485 (8th Cir. 1989)(“The possible danger presented by an individual approaching and entering a structure housing a drug operation is obvious. In fact, it would have been foolhardy for an objectively reasonable officer not to conduct a security frisk under the circumstances”).

8. **A Search Warrant Does Not Permit a Frisk of All Persons**

Present During Its Execution. "The 'narrow scope' of the [Terry](#) exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is taking place." [Ybarra v. Illinois](#), 444 U.S. 85 (1979). Instead, "[a] non-protective search must normally be supported by probable cause and, with certain exceptions, must be authorized by a warrant." [Doe v. Groody](#), 361 F.3d 232, 238 (3rd Cir. 2004). See also [Leveto](#), 258 F.3d at 164 ("The Supreme Court has also held that possession of a warrant to search particular premises is not alone sufficient to justify a pat down of a person found on the premises at the time of execution"). As noted by the Court: "A person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." [Ybarra](#), 444 U.S. at 91.

9. **A Search Warrant Does Not Permit a Search of All Persons Present During Its Execution.** "A search warrant for a premises does not constitute a license to search everyone inside." [Groody](#), 361 F.3d at 243. Instead, "[b]eyond [the] general authority to detain persons and make limited security searches ... there must be probable cause, or at least some degree of particularized suspicion, to justify further searches or seizures of individuals who are neither named in the warrant nor arrested as a consequence of the search." [Rivera v. United States](#), 928 F.2d 592, 606 (2d Cir. 1991). Of course, "[i]f a warrant ... authorize[s] a search of [a person], then the officers [are] entitled to rely upon it to satisfy the probable cause requirement" [Groody](#), 361 F.3d at 243. See [Ybarra](#), 444 U.S. at 91 ("Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be"); [United States v. Di Re](#), 332 U.S. 581, 587 (1948) ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled"); [Khounsavanh](#), 113 F.3d at 287 (Holding that "probable cause to believe ... the premises contain contraband or evidence of a crime ... [does] not alone provide a sufficient basis for the police to ... search [a] defendant's person").

R. EPO #18: IDENTIFY THE CIRCUMSTANCES IN WHICH EVIDENCE MAY BE SEIZED UNDER THE PLAIN VIEW DOCTRINE

1. **General Rule – Law Enforcement Officers May Seize Evidence in "Plain View" Without a Warrant.** "As a general rule, only items that are described in a search warrant may be seized in

accordance with Fourth Amendment concerns.” [United States v. Waldrop](#), 404 F.3d at 368. “An exception to this general rule, however, is found where a police officer has a warrant to search a given area for specified objects and in the course of the search comes across some other article of incriminatory character. The property is then seizable under the plain view doctrine.” [United States v. Bills](#), 555 F.2d 1250, 1251 (5th Cir. 1977). As noted by the Supreme Court: “It is well established that under certain circumstances the police may seize evidence in plain view without a warrant.” [Coolidge v. New Hampshire](#), 403 U.S. 443, 465 (1971). “An example of the applicability of the ‘plain view’ doctrine is the situation in which the police have a warrant to search a given area for specified objects, and in the course of the search come across some other article of incriminating character.” [Horton v. California](#), 496 U.S. 128, 135 (1990).

2. **There are Three Requirements for a “Plain View” Seizure of Evidence.** In [Horton](#), *supra*, the Supreme Court outlined the three requirements that must be met for a permissible “plain view” seizure of evidence. First, a law enforcement officer must lawfully be in a position to observe the item; second, the incriminating nature of the item must be immediately apparent; and third, the officer must have a lawful right of access to the object itself. *Id.* at 135-137. See also [Boone v. Spurgess](#), 385 F.3d 923, 928 (6th Cir. 2004) (“The plainview exception permits a warrantless seizure where ‘(1) the officer is lawfully positioned in a place from which the object can be plainly viewed; (2) the incriminating character of the object is immediately apparent; and (3) the officer has a lawful right of access to the object itself’”)(citation omitted).

NOTE: At least one federal court has recognized a “plain hearing” corollary to the plain view doctrine. See [Ceballos](#), 385 F.3d at 1124 (“We have recognized that the plain view doctrine applie[s] in the context of overheard speech, creating a ‘plain hearing’ doctrine”)[*citing United States v. Ramirez*, 112 F.3d 894, 851 (7th Cir.), *cert. denied*, 522 U.S. 892 (1997)]. The requirements for both “plain view” and “plain smell” are synonymous.

- a. **First, the Law Enforcement Officer Must Have Been in a Lawful Position to Observe the Item.** First, “it is ... an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.” [Horton](#), 496 U.S. at 136. In essence, this simply means that a law enforcement officer must have a lawful reason for being in the location where he observed the item.

- 1) **An Officer May Be Lawfully Present Based On the Execution of a Search or Arrest Warrant.** For example, where a law enforcement officer who makes his observations while serving a valid search or arrest warrant, he is lawfully present for purposes of the plain view doctrine. See, e.g., [United States v. Hamie](#), 165 F.3d 80, 82 (1st Cir. 1999)(Officers were lawfully on premises for plain view observation because they “had a valid warrant to search the premises”); [United States v. Calloway](#), 116 F.3d 1129, 1133 (6th Cir.), cert. denied, 522 U.S. 925 (1997) (Plain view seizure permissible where officers were present because they “were executing a valid search warrant”); [United States v. Reinholz](#), 245 F.3d 765, 777 (8th Cir.), cert. denied, 534 U.S. 896 (2001) (Officers executing a search warrant were lawfully on premises, so seizure of drug paraphernalia from vehicle in driveway was lawful under plain view doctrine where it was “immediately apparent through the car’s windows”); [Munoz](#), 150 F.3d at 411 (Please view seizure permissible during execution of arrest warrant and protective sweep).
- 2) **An Officer May Be Lawfully Present Based On An Exception to the Warrant Requirement.** The lawful presence element of the plain view doctrine has also been met where an exception to the warrant requirement has been found to exist. See, e.g., [United States v. Reed](#), 141 F.3d 644, 649 (6th Cir. 1998)(quoting [Horton](#), 496 U.S. at 135)(“Where the initial intrusion that brings the police within plain view of ... an [incriminating] article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate”); [United States v. Jackson](#), 131 F.3d 1105, 1109 (4th Cir. 1997), cert. denied, 528 U.S. 945 (1999)(Where the officer’s observations occurred after he received consent to enter the basement, the court noted, “an officer’s presence in a residence is justified by a warrant or by any recognized exception to the warrant requirement, including consent, he may seize incriminating evidence that is in his plain view”).

- b. **Second, the Incriminating Nature of the Item Must Be “Immediately Apparent.”** Second, “not only must the item be in plain view, its incriminating character must also be ‘immediately apparent.’” [Horton](#), 496 U.S. at 136 (citations omitted). See also [United States v. Bruce](#), 109 F.3d 323,

328 (7th Cir.), cert. denied, 522 U.S. 838 (1997)(Noting “an officer only needs probable cause to believe that the item is linked to criminal activity in order for the plain view exception to the warrant requirement to apply”).

1) **"Immediately Apparent" Means a Law Enforcement Officer Must Have Probable Cause.**

This means a law enforcement officer must have probable cause that the object in plain view is subject to seizure, such as contraband. [Arizona v. Hicks](#), 480 U.S. 321, 326 (1987)(“We have not ruled on the question whether probable cause is required in order to invoke the ‘plain view’ doctrine. ... We now hold that probable cause is required”). *See also* [Minnesota v. Dickerson](#), 508 U.S. 366, 375 (1993)(“If ... the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object - i.e., if ‘its incriminating character is not immediately apparent’ – the plain-view doctrine cannot justify its seizure”); [Texas v. Brown](#), 460 U.S. 730, 742 (1983)(In discussing requirement that incriminating nature be “immediately apparent,” Court noted the standard is not high, and that a plain view seizure is “presumptively reasonable, assuming there is probable cause to associate the property with criminal activity”); [United States v. Wells](#), 98 F.3d 808, 810 (4th Cir. 1996)(Where weapon was found in defendant's apartment during service of a search warrant, and defendant was known to be a convicted felon, incriminating nature of weapon was immediately apparent because the agents “had probable cause to believe the weapon was evidence of a crime at the time of the seizure”).

2) **Courts Use Various Factors to Determine Whether the Incriminating Nature is "Immediately Apparent".**

In determining whether an item's incriminating nature is immediately apparent, courts will examine various factors, such as “(1) the nexus between the seized object and the items particularized in the warrant; (2) whether the intrinsic nature or appearance of the seized object gives probable cause to associate it with criminal activity; and (3) whether probable cause is the direct result of the executing officer's instantaneous sensory perceptions.” [United States v. Calloway](#), 116 F.3d 1129, 1133 (6th Cir.), cert. denied, 522 U.S. 925

(1997). See also [United States v. Carter](#), 378 F.3d 584, 589-90 (6th Cir. 2004)(Plain view exception applied to seizure of marijuana cigarette where the “smell and appearance” of the cigarette, combined with fact the suspect had admitted smoking marijuana a short time before, established probable cause “to consider it incriminating on its face”). As noted by the Supreme Court: “Regardless of whether the officer detects the contraband by sight or by touch ... the Fourth Amendment’s requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures.” [Dickerson](#), 508 U.S. at 376 (footnote omitted).

- c. **Third, the Law Enforcement Officer Must Have a Lawful Right of Access to the Evidence.** Finally, “not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself.” [Horton](#), 496 U.S. at 137. “The difference between ‘lawfully positioned’ and ‘lawful right of access’ is thus that the former refers to where the officer stands when she sees the item, and the latter to where she must be to retrieve the item.” [Boone](#), 385 F.3d at 928. As noted by the Supreme Court: “Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure.” [Horton](#), 496 U.S. at 137 n.7 (citations omitted).

S. **EPO #19: IDENTIFY FACT SITUATIONS WHERE WARRANTLESS SEARCHES ARE ALLOWED REGARDING MOTOR VEHICLES**

1. **General Rule – Where Officers Have Probable Cause That a Readily Mobile Vehicle has Evidence or Contraband, a Warrantless Search May Be Conducted.** “It is well-settled that a valid search of a vehicle moving on a public highway may be had without a warrant, if probable cause for the search exists, i.e., facts sufficient to warrant a man of reasonable caution in the belief that an offense is being committed.” [Fernandez v. United States](#), 321 F.2d 283, 286-287 (9th Cir. 1963)(citations omitted). See also [United States v. Patterson](#), 140 F.3d 767, 773 (8th Cir), cert. denied, 525 U.S. 907 (1998)(A warrantless search of a vehicle is permissible where law enforcement officers have “probable cause

to believe that contraband or evidence of criminal activity [will] be found"). This exception was first established by the Supreme Court in the 1925 case of [Carroll v. United States](#), 267 U.S. 132 (1925), and provides that, if a law enforcement officer has probable cause to believe that a vehicle has evidence of a crime or contraband located in it, a search of the vehicle may be conducted without first obtaining a warrant.

2. **There are Two Distinct Justifications for the Vehicle Exception.**

There are two (2) separate and distinct rationales underlying this exception. See, e.g., [United States v. Pinela-Hernandez](#), 262 F.3d 974, 978 (9th Cir. 2001), cert. denied, 535 U.S. 1120 (2002) ("The reasons for this exception are two-fold: the expectation of privacy in one's vehicle is less than in one's home, and the mobility of vehicles necessitates faster action on the part of law enforcement officials").

- a. **The Inherent Mobility of a Vehicle Makes Obtaining a Warrant Impracticable.** First, the inherent mobility of vehicles typically makes it impracticable to require a warrant to search, in that "the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." [Carroll](#), 267 U.S. at 153. See also [United States v. Washburn](#), 383 F.3d 638, 641 (7th Cir. 2004) ("The original premise for the automobile exception was that a vehicle's 'ready mobility' made an 'immediate intrusion' necessary to prevent the destruction of evidence"). As the Supreme Court has consistently observed, the inherent mobility of vehicles "creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." [South Dakota v. Opperman](#), 428 U.S. 364, 367 (1976). For this reason, "searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property." [Cooper v. California](#), 386 U.S. 58, 59 (1967) (citation omitted).
- b. **Individuals Have a Reduced Expectation of Privacy in Vehicles Based on Pervasive Government Regulation.** While the original focus of the mobile conveyance exception was a vehicle's inherent mobility, recent cases have focused on an individual's reduced expectation of privacy in a vehicle to support allowing a warrantless search based on probable cause. See, e.g., [Pennsylvania v. LaBron](#), 518 U.S. 938 (1996); [California v. Carney](#), 471 U.S. 386 (1985); [Washburn](#), 383 F.3d at 641 ("In [Carney](#), however, the Supreme Court clarified that a second reason justified the exception even where an automobile is 'not immediately mobile' - the lesser

expectation of privacy in a vehicle”). As stated by the Supreme Court: “Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspections stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.” [Opperman](#), 428 U.S. at 368.

3. **There are Two Requirements for a Valid Search Under the Vehicle Exception.** There are two (2) requirements for a valid search under the mobile conveyance exception. See, e.g., [United States v. Watts](#), 329 F.3d 1282, 1286 (11th Cir. 2003)(Noting “there are only two questions that must be answered in the affirmative before authorities may conduct a warrantless search of an automobile. The first is whether the automobile is readily mobile. ... The second prong of the test, probable cause, is determined under the facts of each case”).

- a. **There Must Be Probable Cause to Believe Contraband or Evidence of a Crime is Located in the Vehicle.** First, there must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched. “Articulating precisely what ... ‘probable cause’ mean[s] is not possible.” [Ornelas v. United States](#), 517 U.S. 690, 695 (1996). Suffice it to say, probable cause cannot be “readily, or even usefully, reduced to a neat set of legal rules.” *Id.* at 695-696. Instead, the Supreme Court has found probable cause to exist “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” *Id.* at 696. See also [United States v. Brown](#), 345 F.3d 574 (8th Cir. 2003)(Noting an “officer has probable cause to search a vehicle ‘when, given the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or evidence of a crime would be found in a particular place’”)(citation omitted).

- 1) **Only the Requirement for a Warrant is Excused.** In essence, this simply means that before conducting a warrantless search of a vehicle, a law enforcement officer should have sufficient facts available to him so that if he attempted to obtain a warrant from a magistrate judge, he would be successful. As noted by the Supreme Court in [United States v. Ross](#), 456 U.S. 798, 823 (1982): “[O]nly the prior approval of the

magistrate is waived; the search otherwise [must be such] as the magistrate could authorize.” Thus, a search of a vehicle based upon probable cause “is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant had not actually been obtained.” *Id.* at 809. In determining whether probable cause exists, courts utilize a “totality of the circumstances” test. *Illinois v. Gates*, 416 U.S. 213, 230-231 (1983).

2) **Probable Cause to Search a Vehicle May Be Established in a Variety of Different Ways.**

Establishing probable cause to search a vehicle may be accomplished in a variety of ways.

a) **A Tip Provided By a Confidential Informant May Establish Probable Cause for a Vehicle Search.**

For example, a law enforcement officer may be able to establish probable cause based on a tip provided to him by a reliable confidential informant. *Maryland v. Dyson*, 527 U.S. 465 (1999). *See also United States v. Rodriguez*, 367 F.3d 1019, 1026 (8th Cir. 2004)(Probable cause established where informant scheduled buy and defendant arrived as scheduled; informant identified defendant; and defendant exchanged “code” word with informant); *United States v. Lumpkin*, 159 F.3d 983, 986 (6th Cir. 1998)(Noting that “probable cause may come from a confidential informant’s tip, when sufficiently detailed and corroborated by the independent investigation of law enforcement officers”).

b) **A Law Enforcement Officer’s Plain View Observations May Establish Probable Cause for a Vehicle Search.**

Additionally, when a law enforcement officer personally observes evidence or contraband in plain view inside a vehicle, probable cause can arise. *See, e.g., United States v. Van Zee*, 380 F.3d 342, 343-44 (8th Cir. 2004)(Finding law enforcement officers had probable cause to search a truck where one officer “saw the end of a glass tube in plain view on the truck console” and “reasonably believed it was part of a glass ‘crank’ pipe based on his experience as a narcotics investigator and what the agents

had been told about [the defendant's] drug activities"); [United States v. Fladten](#), 230 F.3d 1083, 1086 (8th Cir. 2000)(Where "an item commonly used in the manufacture of methamphetamine was in plain view in the back seat of the automobile," probable cause existed for search of vehicle); [United States v. McGuire](#), 957 F.2d 310, 314 (7th Cir. 1992) (Discovery of open container of alcohol in car in violation of state law gave police probable cause to conduct warrantless search of car).

c) **A Law Enforcement Officer's May Establish Probable Cause Using "Plain Smell."**

Additionally, the "plain smell" corollary to the plain view doctrine may allow a law enforcement officer to establish probable cause to search a vehicle based upon his or her sense of smell. See, e.g., [United States v. Foster](#), 376 F.3d 577, 588 (6th Cir. 2004) ("Accordingly, when the officers detected the smell of marijuana coming from Foster's vehicle, this provided them with probable cause to search the vehicle without a search warrant"); [United States v. Miller](#), 812 F.2d 1206, 1208-1209 (9th Cir. 1987)(Probable cause established where "the police officers who arrived at the Elm Street address detected a strong smell of phylacetic acid, known to be used in the manufacture of methamphetamine, emanating from Miller's car. In addition, the officers observed a handgun in plain view on the front floor and laboratory equipment commonly used in the manufacture of methamphetamine on the backseat of Miller's car. These plain view, plain smell observations ... gave the officers sufficient independent probable cause to search Miller's car without a warrant"); [United States v. Harris](#), 958 F.2d 1304 (5th Cir.), cert. denied, 506 U.S. 898 (1992)(plain smell); [United States v. Anderson](#), 468 F.2d 1280 (10th Cir. 1972)(plain smell); [United States v. Taylor](#), 162 F.3d 12, 21 (1st Cir. 1998)(Officers had probable cause to search car for narcotics based upon "strong odor' of marijuana").

b. **The Vehicle Must Be "Readily Mobile" to Search It Under**

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the Vehicle Exception. The second requirement for a valid search under the mobile conveyance exception is that the vehicle be “readily mobile.” “All that is necessary to satisfy this element is that the automobile is operational.” [United States v. Watts](#), 329 F.3d 1282, 1286 (11th Cir. 2003). Thus, “for a vehicle to fall within the automobile exception, it is not necessary that it be occupied or moving at the time of the police officer’s intrusion into the vehicle.” [United States v. Wesley](#), 918 F. Supp. 81, 85 (W.D.N.Y. 1996). Stated differently, “readily mobile” does not mean that the vehicle be moving at the time it is encountered, only that the vehicle be capable of ready movement. Illustrative on this point is [California v. Carney](#), 471 U.S. 386 (1985). In [Carney](#), the Court noted that, “when a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes – temporary or otherwise – the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.” [Id.](#) at 392-393. While the Supreme Court did not discuss the applicability of the mobile conveyance exception to a motor home that is “situated in a way or place that objectively indicates that it is being used as a residence,” [Id.](#) at 394 n.3, they did address “several factors which bear on whether or not a vehicle comes within the automobile exception for Fourth Amendment purposes.” [United States v. Hatley](#), 15 F.3d 856, 859 (9th Cir. 1994) (quotation omitted). Among the factors deemed relevant to this decision are:

- 1) **The Location of the Vehicle;**
- 2) **Whether the Vehicle was Readily Mobile or Elevated on Blocks;**
- 3) **Whether the Vehicle was Licensed;**
- 4) **Whether the Vehicle was Connected to Utilities;**
- 5) **Whether it had Convenient Access to a Public Road.**

[Carney](#), 471 U.S. at 394 n.3. See also [Hatley](#), 15 F.3d at 859; [United States v. Brookins](#), 345 F.3d 231, 238 (4th Cir. 2003)(Holding vehicle exception applied where “motor vehicle at issue was clearly operational and therefore ‘readily movable’”).

4. **No Exigency is Required to Conduct a Search Under the Vehicle Exception.** There is no “exigency” required to conduct a warrantless vehicle search; all that is required is a mobile conveyance and probable cause. Thus, even if a law enforcement officer had the opportunity to obtain a warrant and failed to do so, the search will still be valid if the two requirements discussed above were present. See [Maryland v. Dyson](#), 527 U.S. 465, 466 (1999) (Court relied upon previous decision in holding that “the automobile exception does not have a separate exigency requirement: ‘If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits the police to search the vehicle without more’”); .
5. **A Search Under the Vehicle Exception May Be Conducted Immediately at the Scene or at a Later Time After the Vehicle Has Been Impounded.** Once a law enforcement officer has probable cause to search a readily mobile vehicle, the search may be conducted immediately or later at the police station. “There is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure.” [United States v. Johns](#), 469 U.S. 478, 484 (1985)(citations omitted). In [Johns](#), the Supreme Court upheld the warrantless search of three packages that had been seized from a vehicle three days earlier, noting, “the justification to conduct such a warrantless search does not vanish once the car has been immobilized.” [Id.](#) See also [Michigan v. Thomas](#), 458 U.S. 259, 261 (1982)(per curiam)(“The justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court’s assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant”); [Chambers v. Maroney](#), 399 U.S. 42, 52 (1975)(Noting “there is little to choose in terms of practical consequences between an immediate search without a warrant and the car’s immobilization until a warrant is obtained”); [Texas v. White](#), 423 U.S. 67, 68 (1975)(per curiam)(Noting “police officers with probable cause to search an automobile on the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant”); [United States v. Rodriguez](#), 367 F.3d 1019, 1027 (8th Cir. 2004)(Where probable cause exists to search a vehicle, search “may take place at a separate place and

time”)[citing [United States v. Winters](#), 221 F.3d 1039, 1041 (8th Cir. 2000)].

NOTE: Notwithstanding the above, law enforcement officers must act “reasonably” and may not “indefinitely retain possession of a vehicle and its contents before they complete a vehicle search.” [Johns](#), 469 U.S. at 487. Further, where time permits, a search warrant for the vehicle should be obtained, even in situations where a warrantless search may be permissible.

6. **The Vehicle Exception May Apply Even Where the Vehicle is Parked on Private Property.** “[T]he Supreme Court has never held that a vehicle’s location on private property forecloses application of the [vehicle] exception under all circumstances.” [United States v. Shepherd](#), 714 F.2d 316, 319 (4th Cir. 1983), cert. denied, 466 U.S. 938 (1984). See also [Brookins](#), 345 F.3d at 237 n.8 (Declining defendant’s invitation to adopt a “bright-line rule, whereby the automobile exception may never apply when a vehicle is stationed on private, residential property”); [Hatley](#), 15 F.3d at 858-59 (“Though we have never addressed the precise issue of whether the vehicle exception applies to an inoperable vehicle, we have explicitly held that the vehicle exception applies to a search of a vehicle parked on a private driveway”)[citing [United States v. Hamilton](#), 792 F.2d 837, 843 (9th Cir. 1986)]; [United States v. Markham](#), 844 F.2d 366, 368 (6th Cir.), cert. denied, 488 U.S. 843 (1988)(“Although this case presents a variation on [Carney](#) because the vehicle searched was parked in a private driveway, the Court finds that the [Carney](#) rationale is controlling”).
7. **The Scope of a Search Under the Vehicle Exception**
 - a. **General Rule – A Search Under the Vehicle Exception Will Extend to Every Place in the Vehicle Where the Object of the Search Could Be Located.** The Supreme Court in [United States v. Ross](#), 456 U.S. 798 (1982), laid out the scope of a search conducted pursuant to the mobile conveyance exception. There, the Court stated: “We hold that the scope of the warrantless search authorized by [the mobile conveyance] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents that may conceal the object of the search.*” *Id.* at 825 (emphasis added).
 - 1) **Law Enforcement Officers May Only Search Those Areas of the Vehicle Where the Object of the Search Could Be Located.** It should be

remembered, however, that probable cause to search does not automatically entitle a law enforcement officer to search every part of a vehicle. See, e.g., [Ross](#), 456 U.S. at 824 (“The scope of a warrantless search of an automobile ... is defined by the object of the search and the places in which there is probable cause to believe that it may be found”). For example, where there is probable cause to believe that a vehicle contains drugs, a search of the glove compartment would be permissible. Alternatively, if there is probable cause that the vehicle contains a large stolen television, a search of the glove compartment would be impermissible, in that the television could not be concealed in that location. Any mobile conveyance search is necessarily limited by what it is the officers are seeking in their search. In sum, if a search warrant could authorize the officers to search in a particular location, such as the passenger compartment or trunk of the vehicle, the officers may search there without a warrant.

2) **Particularized Probable Cause is Generally Not Required Before Searching a Trunk.** A question that often arises concerns whether a law enforcement officer must have “particularized” suspicion that evidence (e.g., drugs) are located in the trunk before a search of that area could ensure. Some examples are provided below.

a) **Drugs.** If drugs (or drug paraphernalia) are found in the passenger compartment of a vehicle, this will typically allow for a search of the trunk for additional drugs. This is true even in situations where the drugs found in the passenger compartment amounted to what would be considered “personal use” amounts. See [United States v. Turner](#), 119 F.3d 18, 20 (D.C. Cir. 1997); [United States v. Loucks](#), 806 F.2d 208, 210-11 (10th Cir. 1986); [United States v. Burnett](#), 791 F.2d 64, 67 (6th Cir. 1986); [United States v. Hough](#), 944 F. Supp. 20, 23 & n.2 (D.D.C. 1996); [United States v. Fladten](#), 230 F.3d 1083, 1086 (8th Cir. 2000 (Holding that drug paraphernalia on the backseat of a car parked near a house where drug-related activity took place provided probable cause for a trunk search); [United States v. Parker](#), 72 F.3d 1444, 1450 (10th Cir.

1995)(Holding that drugs and a gun found in a passenger compartment, in combination with the odor of marijuana smoke, provided probable cause to search the trunk, although the odor alone would have been insufficient); [United States v. Haley](#), 669 F.2d 201, 204 (4th Cir.), cert. denied, 457 U.S. 1117 (1982) (Holding that marijuana odor and a bag of marijuana found in a car were sufficient to support a trunk search). However, at least one circuit has held that, “although the smell of burnt marijuana emanating from a vehicle provides probable cause to search the passenger compartment of that vehicle, if that search fails to uncover corroborating evidence of contraband, probable cause to search the trunk of the vehicle does not exist.” [United States v. Wald](#), 216 F.3d 1222, 1229 (10th Cir. 2000)[*citing* [United States v. Nielsen](#), 9 F.3d 1487, 1491 (10th Cir. 1993)].

- b) **Alcohol.** Finding an open container of alcohol in a vehicle will establish probable cause for a search of that vehicle, including “every part of the vehicle and its contents that could conceal additional contraband, including the area beneath the passenger seat and the trunk.” [McGuire](#), 957 F.2d at 314.
- c) **Weapons.** Discovering weapons in the passenger compartment of a vehicle may also provide probable cause to search the trunk of the vehicle. See, e.g., [Brown](#), 334 F.3d at 1171. (Sustaining search of trunk because it was reasonably likely, in light of what the passenger compartment contained (a pistol) and other evidence (including multiple gunshots heard recently in the neighborhood), that another weapon would be in the trunk); [United States v. Alvarez](#), 899 F.2d 833, 839 (9th Cir. 1990), cert. denied, 498 U.S. 1024 (1991)(Holding that police officers had probable cause to search the trunk after police discovered two concealed weapons on defendant and had reason to believe that the defendant's trunk contained more contraband).
- d) **Stolen Property.** At least one court has found

that a search of the trunk for stolen property is permissible where fraudulent identifications and credit cards were found in the passenger compartment. See [United States v. Brown](#), 374 F.3d 1326, 1328-29 (D.C. Cir. 2004) (Probable cause existed to search the trunk for stolen property where a search of the passenger compartment uncovered two false identifications, a credit card in the same name as one of the false identifications, and a batch of checks under the same name on the false identification).

- e) **Canine Alerts to the Passenger Compartment of Vehicle.** When a trained drug dog alerts to the passenger compartment of a vehicle, some (but not all) courts hold that the alert provides probable cause to search the trunk. Compare [United States v. Rosborough](#), 366 F.3d 1145, 1153 (10th Cir. 2004) (“Thus, we hold that a canine alert toward the passenger area of a vehicle gives rise to probable cause to search the trunk as well”), with [United States v. Seals](#), 987 F.2d 1102, 1107 n.8 (5th Cir.), cert. denied, 510 U.S. 853 (1993) (Concluding that an initial canine alert in the passenger compartment gives rise to probable cause to search only the passenger compartment of the vehicle and not the rest of the vehicle).

- b. **Containers May Be Searched Under the Vehicle Exception if the Object of the Search Could Be Located in the Container.** A law enforcement officer may also search locked or unlocked containers located in the vehicle, if the object of the search could be concealed inside. See, e.g., [United States v. Knight](#), 306 F.3d 534, 536 (8th Cir. 2002) (Noting “the probable cause that justifies the search of a vehicle also justifies the search of the containers within the vehicle that could conceal the object of the search”); [United States v. Edwards](#), 242 F.3d 928, 939 (10th Cir. 2001) (Noting “if there is probable cause to search a vehicle, the police are allowed to search any package within the vehicle that is capable of concealing the object of the search”); [United States v. Turner](#), 119 F.3d 18, 22 (D.C. Cir. 1997) (Noting “the police may search any container found in an automobile without a warrant ‘if their search is supported by probable cause’”)(citation omitted). While the rule on containers appears to be relatively

straightforward, this issue merits additional discussion.

- 1) **Where Probable Cause Exists Regarding a Specific Container Placed in a Vehicle, the Container May Be Searched.** If a law enforcement officer has probable cause to believe a specific container placed inside a vehicle contains evidence of a crime or contraband, the vehicle may be stopped and searched as is necessary to retrieve that container. Once the container is retrieved, it may be searched without a warrant under the vehicle exception. In these types of situations, the Supreme Court's decision in [California v. Acevedo](#), 500 U.S. 565 (1991), is controlling. In [Acevedo](#), the police had probable cause that a container placed in the trunk of a vehicle contained marijuana. Believing they might lose the evidence if they sought a search warrant, the officers stopped the vehicle, opened the trunk, and searched the container (a paper bag). Marijuana was found inside the bag. In finding the search of the paper bag legal, the Supreme Court held that, when law enforcement officers have probable cause that a specific container placed inside a vehicle has evidence of a crime or contraband located inside of it, they may search the container, locked or unlocked, under the mobile conveyance exception. However, the probable cause relating to the container does not support a general search of the vehicle. If the officers wish to search the entire vehicle, they must have some other justification to do so, such as consent or a search incident to arrest. As stated by the Supreme Court: "In the case before us, the police had probable cause to believe that the paper bag in the automobile's trunk contained marijuana. That probable cause now allows a warrantless search of the paper bag. The facts ... reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment." [Id.](#) at 580.
- 2) **Where Probable Cause Extends to the Vehicle Generally and Not a Specific Container.** If law enforcement officers have probable cause to search the entire vehicle and discover a closed container during their search, the officers may search the container, whether locked or unlocked, if what they

are seeking could be concealed inside of it. As noted by the Supreme Court in [Ross](#), *supra*: “The scope of a warrantless search of an automobile ... is not defined by the nature of the container in which contraband is secreted. Rather, it is defined by the object of the search and the place in which there is probable cause to believe that it may be found.” [Ross](#), 456 U.S. at 824.

- 3) **The Vehicle Exception Includes Passenger’s Belongings.** Further, the rule of [Ross](#) has been extended to include a passenger’s belongings. In [Wyoming v. Houghton](#), 526 U.S. 295 (1999), the Supreme Court noted, “neither [Ross](#) nor the historical evidence it relied upon admits of a distinction among packages or containers based on ownership.” *Id.* at 302. Accordingly, “police officers with probable cause to search a car may inspect passengers’ belongings found in the car capable of concealing the object of the search.” *Id.* at 307.

T. EPO #20: IDENTIFY FACT SITUATIONS WHERE WARRANTLESS SEARCHES ARE ALLOWED DURING EXIGENT CIRCUMSTANCES, E.G., HOT PURSUIT, DESTRUCTION OR REMOVAL OF EVIDENCE, AND EMERGENCY SCENES

1. **General Rule – Warrantless Searches are Permitted Where Exigent Circumstances Exist.** It is firmly ingrained in our system of law that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.” [Mincey v. Arizona](#), 437 U.S. 385, 390 (1978)(emphasis in original)(citation omitted). However, while “there is a strong preference for searches and entries conducted under the judicial auspices of a warrant, the United States Supreme Court has crafted a few carefully drawn exceptions to the warrant requirement to cover situations where ‘the public interest requires some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search.’” [United States v. Holloway](#), 290 F.3d. 1331, 1334 (11th Cir. 2002), cert. denied, 537 U.S. 1161 (2003)[*quoting* [Arkansas v. Sanders](#), 442 U.S. 753, 759 (1979)]. The Supreme Court has recognized that “exigent circumstances” constitute one such exception. [Michigan v. Tyler](#), 436 U.S. 499, 509 (1978)(“Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant”). See also [Warden v. Hayden](#), 387 U.S. 294, 298-99 (1967)(“The Fourth Amendment

does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others”); [Radloff v. City of Oelwein](#), 380 F.3d 344, 348 (8th Cir. 2004)(“An exception to the warrant requirement permits a law enforcement officer to enter and search a home if he acts with probable cause and exigent circumstances exist”).

2. **“Exigent Circumstances” - Defined.** “Exigent circumstances are defined as ‘those circumstances that would cause a reasonable person to believe that entry ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.’” [United States v. McConney](#), 728 F.2d 1195, 1199 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984). See also [Ewolski v. City of Brunswick](#), 287 F.3d 492, 501 (6th Cir. 2002)(“Exigent circumstances exist where there are ‘real immediate and serious consequences’ that would certainly occur were a police officer to ‘postpone action to get a warrant’”(citation and internal brackets omitted)).
3. **The Burden of Proving “Exigent Circumstances” is on the Government.** The burden of proving that an “exigent circumstance” existed rests with the government. See [United States v. Jeffers](#), 342 U.S. 48, 51 (1951)(Noting that, when a claim of exigent circumstances is made, “then the burden is on those seeking the exemption to show the need for it”). In such circumstances, the government must show:
 - a. **The Existence of Probable Cause; ... and**
 - b. **The Existence of An Exigent Circumstance.**

See [United States v. Tobin](#), 923 F.2d 1506, 1510 (11th Cir.), cert. denied, 502 U.S. 907 (1991)(“A warrantless search is allowed, however, where both probable cause and exigent circumstances exist”); [United States v. Lindsey](#), 877 F.2d 777, 780 (9th Cir. 1989) (When exigent circumstances are claimed, “the burden is on the government to demonstrate that: (1) the police had probable cause to search [the defendant’s] apartment; and (2) exigent circumstances excused the lack of a warrant”).
4. **To Have An Exigency, An Officer Must Have An Objectively Reasonable Belief.** “In evaluating whether a warrantless entry was justified by exigent circumstances, we consider the circumstances that confronted the police at the time of the entry.” [United States v. Leverington](#), 397 F. 3d 1112, 1116 (8th Cir. 2005). Accordingly, the question that must be addressed in an exigent circumstances cases is “what an objectively reasonable

officer on the scene could have believed, for if such an officer would have had sufficient grounds to believe there was an exigency, then the Fourth Amendment did not require a warrant, and the suspect's constitutional rights were not violated by a warrantless entry." [Id.](#)

5. **There Are a Variety of Factors to Consider in Determining Whether an "Exigency" Exists Justifying a Warrantless Entry Into a Home.** "The essential question in determining whether exigent circumstances justified a warrantless entry is whether law enforcement agents were confronted by an 'urgent need' to render aid or take action." [United States v. MacDonald](#), 916 F.2d 766, 769 (2d Cir. 1990)(en banc), [cert. denied](#), 498 U.S. 119 (1991). Among the factors considered by courts in determining whether "exigent" circumstances actually existed are the following:

- a. **The Gravity or Violent Nature of the Offense With Which the Suspect is to Be Charged;**
- b. **A Reasonable Belief That the Suspect is Armed;**
- c. **Probable Cause to Believe That the Suspect Committed the Crime;**
- d. **Strong Reason to Believe That the Suspect is in the Premises Being Entered;**
- e. **A Likelihood That Delay Could Cause the Escape of the Suspect or the Destruction of Essential Evidence; or**
- f. **Jeopardize the Safety of Officers or the Public.**

See, e.g., [MacDonald](#), 916 F.2d at 769; [United States v. Hicks](#), 389 F.3d 514 (5th Cir. 2004)(Noting that "exigent circumstances include those in which officers reasonably fear for their safety, where firearms are present, or where there is a risk of a criminal suspect's escaping or fear of destruction of evidence") (citation omitted); [United States v. Reed](#), 572 F.2d 412, 424 (2d Cir.), [cert. denied](#), 439 U.S. 913 (1978); [United States v. Standridge](#), 810 F.2d 1034, 1037 (11th Cir.)(per curiam), [cert. denied](#), 481 U.S. 1072 (1987); [United States v. Baldacchino](#), 762 F.2d 170, 176 (1st Cir. 1985); [United States v. Kulcsar](#), 586 F.2d 1283, 1287 (8th Cir. 1978); [United States v. Phillips](#), 497 F.2d 1131, 1135 (9th Cir. 1974); [United States v. Shye](#), 492 F.2d 886, 891 (6th Cir. 1974) (per curiam); [Vance v. North Carolina](#), 432 F.2d 984, 990 (4th Cir. 1970).

6. **Once the Exigency Ends, a Law Enforcement Officer's Right to Search Terminates.** The scope of a warrantless search is "strictly circumscribed by the exigencies which justify its initiation." [Mincey](#), 437 U.S. at 393 (citation omitted). Thus, once the emergency

circumstances that justified the warrantless entry have been concluded, the right to conduct a warrantless search also concludes. See also [United States v. Goree](#), 365 F.3d 1086, 1090 (D.C. Cir. 2004)(Noting that, under exigent circumstances exception, “the subsequent search must be ‘no broader than necessary’”(citation omitted); [United States v. Pierson](#), 219 F.3d 803, 806 (8th Cir. 2000)(Warrantless entry under exigent circumstances “must be ‘limited in scope to the minimum intrusion necessary to prevent the destruction of evidence’”); [United States v. Aquino](#), 836 F.2d 1268, 1272 (10th Cir. 1988)(same).

7. **There Are Three Recurring Types of Exigent Circumstances.** A number situations are covered under the definition of “exigent circumstances.” See, e.g., [Holloway](#), 290 F.3d at 1334 (This exception “encompasses several common situations where resort to a magistrate for a search warrant is not feasible or advisable, including danger of flight or escape, loss or destruction of evidence, risk of harm to the public or the police ... and hot pursuit”); [United States v. Reid](#), 69 F.3d 1109, 1113 (11th Cir. 1995)(“Recognized situations in which exigent circumstances exist include: ‘danger of flight or escape; danger of harm to police officers or the general public; risk of loss, destruction, removal, or concealment of evidence; and hot pursuit of a fleeing suspect’”(citation omitted); [United States v. Rohrig](#), 98 F.3d 1506, 1515 (6th Cir. 1996)(“While it is not possible to articulate a succinct yet exhaustive list of circumstances that qualify as “exigent,” we have previously characterized the situations in which warrantless entries are justified as lying within one of four general categories: (1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect’s escape, and (4) a risk of danger to the police or others”); [United States v. Francis](#), 327 F.3d 729, 735 (8th Cir. 2003)(“Although the exigent-circumstances exception is narrowly drawn ... it does justify immediate police action without a warrant under limited circumstances, such as where lives are threatened, a suspect’s escape is imminent, or evidence is about to be destroyed”). Discussed below are three of the most common types of exigent circumstances encountered by law enforcement officers.

- a. **One Type of Exigent Circumstance is “Hot Pursuit.”** “The ‘hot pursuit’ justification for warrantless entry into a house derives primarily from the Supreme Court cases of [Warden v. Hayden](#), 387 U.S. 294 (1967), and [United States v. Santana](#), 427 U.S. 38 (1976).” [United States v. Rohrig](#), 98 F.3d 1506, 1515 (6th Cir. 1996). While the concept of “hot pursuit” is used often when discussing exigent circumstances, defining what is meant by the term is more problematic. In general, the following elements must exist for “hot pursuit” to be viable:

- 1) **The Pursuit Must Begin in a Public Place.** First, “hot pursuit” occurs when a suspect enters a home from a public place. As noted by the Supreme Court: “A suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place.” [United States v. Santana](#), 427 U.S. 38, 43 (1976). See also [Warden v. Hayden](#), 387 U.S. 294 (1967).
- 2) **A Law Enforcement Officer Must Have Probable Cause to Arrest.** Second, probable cause must exist to arrest the suspect. See, e.g., [United States v. Lopez](#), 989 F.2d 24, 27 (1st Cir.), cert. denied, 510 U.S. 872 (1993); [United States v. Jones](#), 204 F.3d 541, 543 (4th Cir. 2000); [United States v. Sewell](#), 942 F.2d 1209, 1212 (7th Cir. 1991), cert. denied, 503 U.S. 962 (1992); [United States v. Ramos](#), 933 F.2d 968, 972 (11th Cir. 1991), cert. denied, 503 U.S. 908 (1992).
- 3) **The Crime Involved in the “Hot Pursuit” Must Be “Serious.”** Third, the warrantless entry into the home must be for a “serious” crime. “An important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made.” [Welsh v. Wisconsin](#), 466 U.S. 740, 753 (1984). As a practical matter, this means that the more “serious” the crime, the more likely that the warrantless entry to arrest will be upheld. While the Supreme Court in [Welsh](#) declined to “consider whether the Fourth Amendment may impose an absolute ban on warrantless home arrests for certain minor offenses,” [Id.](#) at 750 n.11, they nonetheless noted “it is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor.” [Id.](#) at 753. See, e.g., [United States v. Mayo](#), 792 F. Supp. 768, 772 (M.D. Ala. 1992) (“The offense of menacing, although categorized as a misdemeanor, involves threats of ‘imminent serious physical injury’ which could support a warrantless in-home arrest. This element of physical violence distinguishes menacing from other misdemeanor offenses that have been deemed too “minor” to justify a warrantless home arrest”).
- 4) **There Must Be Immediate or Continuous Pursuit.**

Fourth, there must be an “immediate or continuous” pursuit of the suspect for “hot pursuit” to apply. See [Welsh](#), 466 U.S. at 753 (“The claim of hot pursuit is unconvincing because there was no immediate or continuous pursuit of the [defendant] from the scene of a crime”); [United States v. Johnson](#), 256 F.3d 895, 907 (9th Cir. 2001) (“The hot pursuit exception to the warrant requirement only applies when officers are in ‘immediate’ and ‘continuous’ pursuit of a suspect from the scene of the crime”); [United States v. Baldacchino](#), 762 F.2d 170, 177 (1st Cir. 1985) (“The pursuit must be immediate or relatively continuous to justify the failure to secure a warrant”); [United States v. Lyons](#), 2000 U.S. Dist. LEXIS 14890 at *5 (E.D. La. 2000) (“The ‘hot pursuit’ exception is evidenced by facts indicating that there was an immediate or continuous pursuit from the scene of the crime”).

- 5) **There Must Be Probable Cause to Enter the Residence.** Finally, an important limitation to the doctrine of exigent circumstances is that these circumstances “justify a warrantless entry into a residence only when there is also probable cause to enter the residence.” [United States v. Johnson](#), 9 F.3d 506, 509 (6th Cir. 1993). See also [United States v. Jones](#), 239 F.3d 716, 719 & n.2 (5th Cir. 2001); [United States v. Burgos](#), 720 F.2d 1520, 1525 (11th Cir. 1983); [United States v. Turner](#), 650 F.2d 526, 528 (4th Cir. 1981). [United States v. Socey](#), 846 F.2d 1439, 1444 n.5 (D.C. Cir.), cert. denied, 488 U.S. 858 (1988); [United States v. Aquino](#), 836 F.2d 1268, 1272 (10th Cir. 1988); [United States v. Howard](#), 828 F.2d 552, 555 (9th Cir. 1987); [United States v. Cresta](#), 825 F.2d 538, 553 (1st Cir. 1987).

- b. **Another Situation in Which “Exigent Circumstances” Have Been Found to Exist Involves the Destruction or Removal of Evidence.** “The law is well-settled that a warrantless entry will be sustained when the circumstances then extant were such as to lead a person of reasonable caution to conclude that evidence of a federal crime would probably be found on the premises and that such evidence would probably be destroyed within the time necessary to obtain a search warrant.” [United States v. Radka](#), 904 F.2d 357, 362 (6th Cir. 1990). See also [United States v. Esparza](#), 162 F.3d 978, 980 (8th Cir. 1998) (“Officers may search without a warrant when faced with certain urgent circumstances, such as the imminent destruction of

evidence”); [United States v. Marshall](#), 157 F.3d 477, 482 (7th Cir.), cert. denied, 525 U.S. 1045 (1998)(“Exigent circumstances have been found to exist when ‘the police have an objective and reasonable fear that evidence is about to be destroyed”)(citation omitted); [United States v. Cuaron](#), 700 F.2d 582, 586 (10th Cir. 1983)(“When officers have reason to believe that criminal evidence may be destroyed ... or removed ... before a warrant can be obtained, the circumstances are considered sufficiently critical to permit officers to enter a private residence in order to secure the evidence while a warrant is sought”).

- 1) **The Test for Entries to Prevent the Destruction of Evidence is Objective.** When examining whether a warrantless entry to prevent the destruction of evidence is permissible, “the test is necessarily objective, and the determination of exigent circumstances will vary from case to case, depending upon the ‘inherent necessities of the situation at the time.’” [United States v. Tovar-Rico](#), 61 F.3d 1529, 1535 (11th Cir. 1995). See also [Marshall](#), 157 F.3d at 482 (same).
- 2) **Courts Have Announced Different Requirements Necessary to Justify a Warrantless Entry to Prevent the Destruction of Evidence.** The circuit courts of appeal have announced different requirements that must be met before a warrantless entry to prevent destruction of evidence would be permissible.
 - a) **The Sixth, Eighth and D.C. Circuits.** In the Sixth, Eighth, and D.C. Circuit Courts of Appeal, a “warrantless entry to prevent the destruction of evidence ‘is justified if the government demonstrates” two factors:
 - (1) **Third Parties Inside.** First, the government must show a reasonable belief that third parties are inside the dwelling.
 - (2) **Loss or Destruction Imminent.** Second, the government must show a reasonable belief that the loss or destruction of evidence is imminent.

[United States v. Gaitan-Acevedo](#), 148 F.3d 577, 585 (6th Cir. 1998) (citation omitted). See also [United States v. Socey](#), 846 F.2d 1439,

1445 (D.C. Cir.), cert. denied, 488 U.S. 858 (1988)(“A police officer can show an objectively reasonable belief that contraband is being, or will be, destroyed within a home if he can show (1) a reasonable belief that third persons are inside a private dwelling and (2) a reasonable belief that these third persons are aware of an investigatory stop or arrest of a confederate outside the premises so that they might see a need to destroy evidence”); [United States v. Munoz](#), 894 F.2d 292, 296 (8th Cir.), cert. denied, 495 U.S. 909 (1990)(“A warrantless search of a residence is justified ... to prevent the destruction of evidence if factual circumstances demonstrate ‘a sufficient basis for an officer to believe somebody in the residence will likely destroy evidence’”)(citation omitted).

- b) **The Tenth Circuit Court of Appeals.** The Tenth Circuit Court of Appeals, however, has announced a four-part test to determine whether the imminent destruction of evidence will justify a warrantless entry. Under the Tenth Circuit’s approach, “[a]n exception to the warrant requirement that allows police fearing the destruction of evidence to enter the home of a suspect should” meet four requirements:
- (1) **Probable Cause.** First, any entry should be made pursuant to clear evidence of probable cause.
 - (2) **Serious Crimes Only.** Second, a warrantless entry is available only for serious crimes and in circumstances where the destruction of evidence is likely.
 - (3) **Limited in Scope.** Third, the entry must be limited in scope to the minimum intrusion necessary.
 - (4) **Clear Exigency.** Finally, the entry must be supported by clearly defined indicators of exigency that are not subject to police manipulation or abuse.

[United States v. Scroger](#), 98 F.3d 1256, 1259 (10th Cir. 1996), cert. denied, 520 U.S. 1149 (1997). Even the Tenth Circuit has recognized, however, that “when officers have reason to believe that criminal evidence may be destroyed or removed before a warrant can be obtained, the circumstances are considered sufficiently critical to permit a warrantless entry.” Id. at 1260 (citations omitted).

c. **A Third Situation in Which “Exigent Circumstances” Have Been Found to Exist Involves Crime Scene Emergencies.**

“Although the Supreme Court has never provided a complete catalog of the exigencies that satisfy the exception, it has recognized that ‘the need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.’” [Goree](#), 365 F.3d at 1089 (citations omitted). Based on this, “[t]hreats to public safety are widely accepted as one of the exigent circumstances exceptions to the Fourth Amendment’s warrant requirement.” [Rhiger](#), 315 F.3d at 1293. Accordingly, “numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” [Mincey v. Arizona](#), 437 U.S. 385, 392 (1978). See also [United States v. Kempf](#), 400 F.3d 501, 503 (7th Cir. 2005) (“An example of exigent circumstances is when police reasonably fear for their safety or the safety of someone inside the premises”); [Leveringston](#), 397 F. 3d at 1117 (“The Fourth Amendment does not require certitude before police may act without a warrant to protect persons or evidence; as we understand the Supreme Court, a showing of probable cause is sufficient”); [Holloway](#), 290 F.3d at 1335-1337 (Noting that “one of the most compelling events giving rise to exigent circumstances is the occurrence of an emergency situation,” and emphasizing that, “although the Fourth Amendment protects the sanctity of the home, its proscription against warrantless searches must give way to the sanctity of human life”).

- 1) **Examples of “Emergency” Situations.** Examples of “emergency” situations in which courts found exigent circumstances to exist include the following:

- a) **Report of Woman and Child in Danger in Crack House**, [United States v. Hughes](#), 993 F.2d 1313 (7th Cir. 1993);

- b) **Stabbing Victim**, [United States v. Gillenwaters](#), 890 F.2d 679 (4th Cir. 1989);
- c) **Explosion in Apartment**, [United States v. Martin](#), 781 F.2d 671 (9th Cir. 1985);
- d) **Open Access to Controlled Substances by Children**, [Mann v. Cannon](#), 731 F.2d 54 (1st Cir. 1984);
- e) **Medical Aid to Defendant Shot by Police**, [United States v. Riccio](#), 726 F.2d 638 (10th Cir. 1984); and
- f) **Reports of Gunshots**, [United States v. Jones](#), 635 F.2d 1357 (8th Cir. 1980).
- g) **Blood Puddle on Driveway With Trail Leading Into the Home**, [United States v. Janis](#), 387 F.3d 682 (8th Cir. 2004)
- h) **Fistfight inside residence seen by officers from outside screen door**. [Brigham City v Stuart](#), 547 U.S. 398 (2006)

Of note, “[p]recedent is clear that the ‘risk of danger’ exigency applies only to situations involving the ‘need to protect or preserve life or avoid serious injury either of police officers themselves or of others.’” [United States v. Williams](#), 342 F.3d 430, 438 (6th Cir. 2003) (citation omitted).

NOTE: “Numerous ... circuits have found that probable cause to believe a burglary is in progress constitutes exigent circumstances sufficient to permit warrantless entry.” [In Re Sealed Case 96-3167](#), 96-3167, 153 F.3d 759, 766 (D.C. Cir. 1998). See, e.g., [United States v. Tibolt](#), 72 F.3d 965, 970 (1st Cir. 1995), cert. denied, 518 U.S. 1020 (1996)(Activation of an alarm system supported warrantless entry to check for burglary); [Murdock v. Stout](#), 54 F.3d 1437, 1442 (9th Cir. 1995)(“The officers prudently attempted to make contact with the resident, no doubt to make sure the resident was safe in light of the officers' concern that a burglary or other crime might have occurred”); [United States v. Johnson](#), 9 F.3d 506, 509 (6th Cir. 1993)(“Several of our sister circuits, however, have upheld warrantless searches conducted during burglary

investigations under the rubric of exigent circumstances”); [Reardon v. Wroan](#), 811 F.2d 1025, 1030 (7th Cir. 1987)(Exigent circumstances existed where officers “were faced with a call reporting a burglary in progress during a time of year when the students were on break and burglaries were known to occur more frequently”); [United States v. Dart](#), 747 F.2d 263, 267 (4th Cir. 1984)(Finding exigent circumstances where “warehouse had clearly been burglarized, and [the officer] had reason to believe that the perpetrators were still on the premises”).

- 2) **The Requirements for a Valid Emergency Scene Search Conducted Without a Warrant Include an Exigency and Probable Cause.** “In validating a warrantless search based on the existence of an emergency, as with any other situation falling within the exigent circumstances exception, the Government must demonstrate both exigency and probable cause.” [Holloway](#), 290 F.3d at 1337. More specifically, a valid emergency scene search must usually meet two requirements:
- a) **Emergency Exists.** First, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
 - b) **Probable Cause.** Second, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

As was made clear by the Supreme Court in [Brigham City](#), the subjective motivation of the officers at the emergency scene are irrelevant so long as there is an objectively reasonable basis to believe that both requirements are present. [Brigham City](#), 547 U.S. at 404-405.

NOTE: As with any exigent circumstance, “an officer’s search [under the emergency scene exception] must be limited to only those areas necessary to respond to the perceived emergency.” [Martin v. Oceanside](#), 360 F.3d 1078,

- 3) **The Probable Cause Standard is Different in Emergency Scene Searches.** “In the typical case, probable cause exists where the circumstances would lead a reasonable person to believe a search will disclose evidence of a crime. In emergencies, however, law enforcement officers are not motivated by an expectation of seizing evidence of a crime. Rather, the officers are compelled to search by a desire to locate victims and the need to ensure their own safety and that of the public.” [Holloway](#), 290 F.3d at 1337 (internal citation omitted). Accordingly, “probable cause for a forced entry in response to exigent circumstances requires finding a probability that a person is in 'danger.'” [Koch v. Town of Brattleboro](#), 287 F.3d 162, 169 (2d Cir. 2002); [Holloway](#), 290 F.3d at 1137.
- 4) **Evidence Found in “Plain View” During an Emergency Scene Search May Be Seized.** “The police may seize any evidence that is in plain view during the course of their legitimate emergency activities.” [Mincey](#), 437 U.S. at 393; [Michigan v. Tyler](#), 436 U.S. 499, 509 (1978)(Once inside a building to fight a fire, “firefighters may seize evidence of arson that is in plain view”); [Coolidge v. New Hampshire](#), 403 U.S. 443, 465 (1971)(“Where the initial intrusion that brings the police within plain view of such an article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate”); [Cervantes](#), 219 F.3d at 888 (“The emergency doctrine provides that if a police officer, while investigating within the scope necessary to respond to an emergency, discovers evidence of illegal activity, that evidence is admissible even if there was not probable cause to believe that such evidence would be found”); [Janis](#), 387 F.3d at 688 (Where officers entered pursuant to exigent circumstances and observed three weapons in plain view, seizure was justified under plain view doctrine).
- 5) **There is No “Murder Scene” Exception to the Fourth Amendment.** In three separate cases, the Supreme Court has rejected attempts at creating a blanket “murder scene” exception to the Fourth

Amendment. In [Mincey v. Arizona](#), 437 U.S. 385, 394 (1978), the Court declined “to hold that the seriousness of the offense under investigation itself creates exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search.” Later, in [Thompson v. Louisiana](#), 469 U.S. 17, 21 (1984), the Court found a “murder scene” exception “inconsistent with the Fourth and Fourteenth Amendments.” Finally, in [Flippo v. West Virginia](#), 528 U.S. 11, 14 (1999), the Court reiterated their earlier rejections of a “murder scene exception” to the Warrant Clause of the Fourth Amendment.”

U. EPO #21: IDENTIFY THE REQUIREMENTS AND SCOPE OF A SEARCH INCIDENT TO A LAWFUL ARREST

1. **General Rule – Searches Incident to Arrest are an Exception to the Warrant Requirement.** It has long been recognized that a search conducted incident to a lawful custodial arrest “is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.” [United States v. Robinson](#), 414 U.S. 218, 224 (1973). See also [United States v. Jackson](#), 377 F.3d 715, 716 (7th Cir. 2004) (Noting that “a search incident to arrest is automatically valid under the Fourth Amendment”); [United States v. Goddard](#), 312 F.3d 1360, 1364 (11th Cir. 2002), cert. denied, 538 U.S. 969 (2003) (“Since the custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment, a search incident to the arrest requires no additional justification”).
2. **There are Three Distinct Justifications for Permitting Searches Incident to Arrest.** In [Chimel v. California](#), 395 U.S. 752 (1969), the Supreme Court outlined three distinct reasons for permitting searches incident to arrest: (1) to discover weapons; (2) to prevent the destruction or concealment of evidence; and (3) to discover any means of escape. As noted by the Court:

*“When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to **remove any weapons that the latter might seek to use in order to resist arrest or effect his escape.** Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize **any evidence on the arrestee’s person in order to prevent its concealment or destruction.**”* [Id.](#) at 762.

See also [Robinson](#), 414 U.S. at 234 (“The justification or reason for the authority to search incident to a lawful arrest rests quite as

much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial”); [United States v. Edwards](#), 415 U.S. 800, 802-03 (1974)(Noting exception permitting searches incident to arrest “has traditionally been justified by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained”)(*citing Robinson, supra*).

3. **The Justifications Do Not Need to Be Particular to the Suspect in a Given Case.** “A search incident to arrest is justified by the concern for officer safety and the need to collect evidence of the offense. ... But, the presence of either justification need not be established in a particular case. That is, officers need not have any reason to think the individual is armed or that evidence of the crime will be found on his person. It is the fact of arrest that enables the officer to conduct a search, not a particularized suspicion as to the suspect’s dangerousness.” [United States v. Pratt](#), 355 F.3d 1119, 1121 (8th Cir. 2004)(internal citations omitted). See also [Jackson](#), 377 F.3d at 716 (Noting that “police are entitled to search the persons and possessions of everyone arrested on probable cause, with or without any reason to suspect that the person is armed or carrying contraband”).
4. **There are Two Requirements for a Valid Search Incident to Arrest.** A search incident to arrest may only be conducted when two (2) requirements have been met.
 - a. **The First Requirement of a Search Incident to Arrest is That a Custodial Arrest Occur.** First, there must be a lawful custodial arrest for a search incident to arrest to be permissible. At a minimum, this requires that (1) probable cause exist to believe that the arrestee has committed a crime and (2) an arrest is actually made. A search incident to arrest may not be conducted in a situation where an actual arrest does not take place. See [United States v. Robinson](#), 414 U.S. 218, 235 (1973); [Jackson](#), 377 F.3d at 717. (Noting “it is ***custody***, and not a stop itself, that makes a full search reasonable”)(emphasis in original); [McCardle v. Haddad](#), 131 F.3d 43 (2d Cir. 1997)(Search incident to arrest not valid where 10-minute detention in backseat of patrol vehicle did not amount to an arrest).
 - 1) **Searches Incident to Arrest May Not Be Conducted in Terry Stop Situations.** For example, a search incident to arrest may not be conducted in a [Terry](#)-type situation, in that “an arrest is a wholly different kind of intrusion upon individual freedom

from a limited search for weapons, and the interests each is designed to serve are likewise quite different. [Robinson](#), 414 U.S. at 228.

- 2) **Searches Incident to “Citation” Are Not Permissible.** Illustrative on this point is [Knowles v. Iowa](#), 525 U.S. 113 (1998), where the Supreme Court struck down an Iowa statute that permitted an officer to conduct a “search incident to citation” in those cases where a law enforcement officer had probable cause to arrest a suspect for a traffic violation, but chose, instead, simply to issue a traffic citation. Citing [Robinson](#), *supra*, the Supreme Court noted that the Iowa statute did not implicate the two historical justifications permitting a search incident to arrest, namely, (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. First, a custodial arrest “involves danger to an officer because of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.” [Knowles](#), 525 U.S. at 117; *see also* [Washington v. Chrisman](#), 455 U.S. 1, 7 (1982) (“Every arrest must be presumed to present a risk of danger to the arresting officer. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger. Moreover, the possibility that an arrested person will attempt to escape if not properly supervised is obvious”)(citations omitted). The same degree of danger noted in [Knowles](#) and [Chrisman](#) is not present when a law enforcement officer is issuing a traffic citation. Second, the likelihood of evidence being destroyed in the type of situation addressed by the Iowa law was minimal. *See, e.g.,* [United States v. Garcia](#), 376 F.3d 648, 650 (7th Cir. 2004) (“Most drivers are given citations and sent on their way. Because the principal justifications for full searches are the need to detect risks to the arresting officers and to preserve evidence that suspects could destroy on the way to the lockup, there is slight warrant for intrusive steps when detention is brief and the drivers (and most evidence) will soon depart”).

- b. **The Second Requirement of a Search Incident to Arrest is That the Search Occur “Contemporaneous” With the Arrest.** The second requirement for a lawful search incident to arrest is that the search must be “substantially

contemporaneous” with the arrest. [New York v. Belton](#), 453 U.S. 454 (1981). See also [Stoner v. California](#), 376 U.S. 483, 486 (1964); [Preston v. United States](#), 376 U.S. 364, 367-368 (1964); [United States v. Mitchell](#), 64 F.3d 1105, 1110 (7th Cir. 1995), cert. denied sub nom. [Johnson v. United States](#), 517 U.S. 1158 (1996)(Noting that any search incident to arrest “must be contemporaneous with arrest”). Unfortunately, what exactly is meant by this phrase is open to interpretation. In [United States v. Turner](#), 926 F.2d 883 (9th Cir.), cert. denied, 502 U.S. 830 (1991), the court stated that a search incident to arrest must be conducted “at about the same time as the arrest.” *Id.* at 887. While very general, this comment reiterates the Supreme Court’s mandate that, when a search is too remote in time or place from the arrest, the search cannot be justified as incident to the arrest. [Preston](#), 376 U.S. at 367.

1) **Whether a Search was “Substantially Contemporaneous” With the Arrest is Judged Based on the Totality of the Circumstances.**

Whether a search was “substantially contemporaneous,” is an issue that must be reviewed in light of the Fourth Amendment’s general reasonableness requirement, taking into consideration all of the circumstances surrounding the search. Thus, while a search conducted 15 minutes after an arrest might be valid in one case, [Curd v. City of Judsonia](#), 141 F.3d 839 (8th Cir.), cert. denied, 525 U.S. 888 (1998)(Warrantless search of purse at police station found to be valid as incident to arrest even though search occurred 15 minutes after the defendant’s arrest at home), a search 30 to 45 minutes after the arrest might be invalid in another. [United States v. Vasey](#), 834 F.2d 782 (9th Cir. 1987) (Warrantless search held not incident to arrest and invalid when the search took place 30 to 45 minutes after the defendant had been arrested, handcuffed, and placed in patrol vehicle). [United States v. Hrasky](#), 453 F. 3d 1099 (8th Cir. 2006) (A one hour delay from the time a driver with a suspended license was placed in the police car until the search incident to arrest was upheld where the defendant spent most of that time trying (unsuccessfully) to negotiate his release on the basis of offering to provide information on narcotics activity.)

2) **A Variety of Factors are Considered in Determining Whether the Search was**

“Substantially Contemporaneous” With the Arrest.

Among the factors to be considered in determining whether a search was “contemporaneous” with the arrest are where the search was conducted; when the search was conducted in relation to the arrest; and whether the defendant was present at the scene of the arrest during the search. *See, e.g., United States v. McLaughlin*, 170 F.3d 889, 892 (9th Cir. 1999) (Held that search of vehicle that took place approximately 5 minutes after the defendant had been arrested and removed from the scene was contemporaneous with the arrest. When analyzing definition of “contemporaneous,” court noted that “some courts have characterized the critical issue as whether the arresting officers conducted the search as soon as it was practical to do so, including whether the officers took intervening actions not directly related to the search”)(citation omitted). In sum, if it can be safely accomplished, the search incident to arrest should be conducted at the scene of the arrest, as soon as possible after the arrest, and before the defendant is removed from the area.

- 3) **In Limited Circumstances, the Search May Take Place Before the Actual Arrest Occurs.** “Where the formal arrest follow[s] quickly on the heels of the ... search of [the defendant’s] person,” the Supreme Court has found that it is not “particularly important that the search preceded the arrest rather than vice versa.” *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980). *See also United States v. Goddard*, 312 F.3d 1360, 1364 (11th Cir. 2002), *cert. denied*, 538 U.S. 969 (2003); and *United States v. Powell*, 483 F.3d 836 (police may conduct a search incident to arrest of a suspect whom they have probable cause to arrest if the formal arrest follows quickly on the heels of the challenged search). Indeed, every circuit that has considered the question-save one-has concluded that a search incident to arrest may precede the arrest. *See, e.g., United States v. Bizier*, 111 F.3d 214, 217 (1st Cir. 1997); *United States v. Currence*, 446 F.3d 554, 557 (4th Cir. 2006); *United States v. Hernandez*, 825 F.2d 846, 852 (5th Cir. 1987); *United States v. Montgomery*, 377 F.3d 582, 588 (6th Cir. 2004); *United States v. Ilazi*, 730 F.2d 1120, 1126-27 (8th Cir. 1984); *United States v. Banshee*, 91 F.3d 99, 102

(11th Cir. 1996). Only the Seventh Circuit has held that a *Belton* search may not precede a custodial arrest, but it did so in an opinion that, like the briefs then before it, betrayed no awareness of the Supreme Court's holding in *Rawlings*. See *Ochana v. Flores*, 347 F.3d 266, 270 (7th Cir. 2003).

5. **A Search Incident to Arrest May Be Conducted Even After An Arrestee Has Been Handcuffed.** A number of federal courts, although not all, have upheld searches incident to arrest that were conducted after the arrestee was secured in handcuffs. Those courts that have allowed such a search include the Fourth, Seventh, Eighth, Ninth, and D.C. Circuits. See *Mitchell*, 64 F.3d at 1110 (“We do not believe that Johnson's handcuffing destroyed Lewellen's justification for searching the briefcase”); *Nohara*, 3 F.3d at 1243 (Noting “the officers ... did not make the search unreasonable by handcuffing Nohara, seating him in the hallway, and searching the black bag within two to three minutes of his arrest”); *United States v. Abdul-Saboor*, 85 F.3d 664, 667-71 (D.C. Cir. 1996)(Upholding search incident to arrest even though arrestee was in handcuffs); *United States v. Silva*, 745 F.2d 840, 847 (4th Cir. 1984), cert. denied, 470 U.S. 1031 (1985)(Search incident to arrest upheld where the arrestees were handcuffed behind their backs, and as they sat on a motel room bed, an officer searched a locked, zippered bag which contained two firearms and ammunition”); *United States v. Palumbo*, 735 F.2d 1095, 1097 (8th Cir.), cert. denied, 469 U.S. 934 (1984)(Court rejected appellant's argument that a search was not incident to his arrest because “the cocaine, hidden behind a dresser drawer, was inaccessible to him because he was handcuffed and in the presence of several officers”); *United States v. Roper*, 681 F.2d 1354, 1357-59 (11th Cir. 1982), cert. denied sub nom. *Newton v. United States*, 459 U.S. 1207 (1983) (arrestee handcuffed in hallway of motel and escorted inside room by agents prior to search of briefcase). Alternatively, the Third Circuit Court of Appeals has refused to permit a search incident to arrest of an arrestee who is handcuffed and physically unable to reaccess the lunging area. See *United States v. Myers*, 308 F.3d 251, 267 (3d Cir. 2002) (Because arrestee was “handcuffed behind his back while lying face down on the floor ...[while] ‘covered’ by two armed police officers” when the search occurred, search of bag impermissible because arrestee would have had to have been “an acrobat or a Houdini” in order to gain access).
6. **The Permissible Scope of a Search Incident to Arrest Varies Depending on the Context.** The permissible scope of a search incident to arrest can be described as follows:

- a. **A Law Enforcement Officer May Search a Suspect's Person Incident to Arrest.** When a law enforcement officer makes a custodial arrest of an individual, the officer is entitled to search the suspect's person. [United States v. Robinson](#), 414 U.S. 218, 235 (1973) ("We hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment"); [Chimel v. California](#), 395 U.S. 752, 762-763 (1969) ("When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape"); [United States v. Pratt](#), 355 F.3d at 1121 (Noting that, "if an officer has arrested the individual, the officer may search the individual's person incident to that arrest and may reach into his pockets").
- 1) **Strip and Visual Body Cavity Searches Incident to Arrest.** To be reasonable as part of a search incident to arrest, strip and visual body cavity searches must be justified by at least a reasonable suspicion that the arrestee is concealing contraband or weapons. The manner of the search, including the place in which it is conducted, must also be reasonable. Absent the most compelling circumstances, such as those that pose potentially serious risks to the arresting officer or others in the vicinity, it is unreasonable to conduct a strip search in an area exposed to the general view of persons known to be in the vicinity whether or not any actually viewed the search. [Campbell v. Miller](#), 486 F.3d 949 (7th Cir. 2007).
 - 2) **What Degree of Intrusion Qualifies as a "Strip Search?"** "A strip search under federal law includes the exposure of a person's naked body for the purpose of a visual or physical examination." [Amaechi v. West](#), 237 F.3d 356, 363 (4th Cir. 2001); citing [United States v. Vance](#), 62 F.3d 1152, 1156 (9th Cir. 1995) (treating pulling down a suspect's trousers and underwear in public as a strip search); [United States v. Cardenas](#), 9 F.3d 1139, 1145 (5th Cir. 1993) (noting that directing a suspect to undress amounts to a strip search)). While this definition tells us what kinds of searches are *included* in the term "strip search," it does not provide an exhaustive list. Notably, federal courts have begun turning to state law to determine the parameters of a strip search.

See, e.g., Amaechi, 237 F.3d at 365 (“[B]ecause states define strip search in a uniform fashion . . . we find state law persuasive on our interpretation of what constitutes a strip search.”) Many state statutes contain language such as: “‘Strip search’ means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person.” 725 ILCS 5/103-1 (emphasis added); see also, Va. Code Ann. 19.2-59.1(A); Colo. Rev. Stat. Ann. § 16-3-405 (West 1998); Conn. Gen. Stat. Ann. § 54-33k (West 1994); Fla. Stat. Ann. § 901.211 (West 1996); Iowa Code Ann. § 702.23 (West 1993); Ohio Rev. Code § 2933.32(A)(2). Based on these state law definitions, which are relied upon heavily by the federal courts, one could argue that even arranging an arrestee’s clothing to permit inspection of part of the underwear is a strip search.

- b. **A Law Enforcement Officer May Also Search Incident to an Arrest the Area Within the Arrestee’s “Immediate Control.”** Upon making a custodial arrest, a law enforcement officer is also entitled to search any area within the suspect’s “immediate control.” Chimel v. California, 395 U.S. 752, 763 (1969) (“There is ample justification . . . for a search of the arrestee’s person and the area ‘within his immediate control’ – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence”).

- 1) **Factors to Consider in Determining What is Reasonably An Area Within An Arrestee’s “Immediate Control.”** In deciding what areas are reasonably within an arrestee’s “immediate control,” the following factors should be considered:
- a) **Distance.** The distance between the arrestee and the place searched.
 - b) **Restraints.** Whether the arrestee was handcuffed or otherwise restrained.
 - c) **Positioning.** Whether the police were positioned so as to block the arrestee from the area searched.
 - d) **Access.** The ease of access to the area itself.
 - e) **Numbers.** The number of officers present.

3 W. LaFave, *Search and Seizure* § 6.3(c), at 306-07 (3d ed. 1996). See also [United States v. Tarazon](#), 989 F.2d 1045, 1051 (9th Cir.), cert. denied, 510 U.S. 853 (1993)(Search incident to arrest upheld where “the officials searched the drawers of the desk Tarazon and Serna were sitting behind when they were arrested ... [which] were clearly within Tarazon's and Serna's control at the time they were arrested”).

- 2) **Extending Beyond the Area of Arrestee's “Immediate Control” in a Home.** The doctrine of search incident to arrest does not ordinarily allow the officer to move the arrestee from place to place inside the home, thereby expanding the area of immediate control that is subject to search. Only when the officer can articulate a reasonable necessity to move the subject or open additional containers will it be reasonable to search additional areas.

- a) **A Law Enforcement Officer May Accompany an Arrestee to Other Areas Within the House.** “The rule of [Chimel v. California](#), 395 U.S. 752 (1969), does not permit the arresting officers to lead the accused from place to place and use his presence in each location to justify a search incident to the arrest.” [United States v. Whitten](#), 706 F.2d 1000, 1016 (9th Cir. 1983), cert. denied, 465 U.S. 1100 (1984). However, where it is necessary to move an arrestee into another room in the house from where the arrest occurred to obtain clothing, a law enforcement officer will be justified in accompanying the arrestee. See [Garcia](#), 376 F.3d at 650 (Noting that “police may follow an arrested suspect wherever he goes, even inside a residence”); [Watkins v. United States](#), 564 F.2d 201, 203 (6th Cir. 1977), cert. denied, 435 U.S. 976 (1978)(Where police “accompanied defendant to the bedroom so that he could get a shirt, and ... noticed the butt of a firearm under the mattress of the bed,” weapons was properly seized incident to arrest)... If the officer observes evidence in plain view, it may be seized. This is so even if the decision to move the arrestee was made by a law enforcement officer rather than the

arrestee. See, e.g., [United States v. Di Stefano](#), 555 F.2d 1094, 1101 (2d Cir. 1977) (Where arrestee was wearing only a nightgown and bathrobe at the time of arrest, "the officers had a duty to find clothing for Sally to wear or to permit her to do so. Having permitted Sally to retire to her bedroom to dress, Officer Christie was clearly justified in accompanying her to maintain a 'watchful eye' on her and to assure that she did not destroy evidence or procure a weapon"); [United States v. Titus](#), 445 F.2d 577, 579 (2d Cir.), cert. denied, 404 U.S. 957 (1971)(Where arrestee was nude, officer's search of bedroom for clothing was reasonable, and evidence of robbery found in the bedroom was admissible, because "they were bound to find some clothing for Titus rather than take him nude to FBI headquarters on a December night, [and] the fatigue jackets were properly seized under the 'plain view' doctrine"); [United States v. Butler](#), 980 F.2d 619, 621 (10th Cir. 1992) ("Several courts have indicated that, even without an express invitation as in [Chrisman](#), police may conduct a limited entry into an area for the purpose of protecting the health or safety of an arrestee")(citations omitted).

- b) **Arrests Outside a Home Will Not Justify a Search Incident to Arrest Inside.** "Ordinarily, the arrest of a person outside of a residence does not justify a warrantless search of the residence itself." [United States v. DeBuse](#), 289 F.3d 1072, 1075 (8th Cir. 2002)[citing [Chimel v. California](#), 395 U.S. 752, 763 (1969)]. See also [Shipley v. California](#), 395 U.S. 818, 820 (1965)("The Constitution has never been construed by this Court to allow the police, in the absence of an emergency, to arrest a person outside his home and then take him inside for the purpose of conducting a warrantless search. On the contrary, 'it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein'")(citation omitted); [James v. Louisiana](#), 382 U.S. 36, 37 (1965)(Court held that the

search of an arrestee's home following his arrest on the street two blocks away was not "incident to the arrest"); [Agnello v. United States](#), 269 U.S. 20, 32 (1925) ("It has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein").

- c) **In Some Situations, a Law Enforcement Officer May Enter a Home Following an Arrest That Occurred Outside.** While the general rule is stated in the preceding paragraph, some circuits have carved out an exception to that rule.

- (1) **Entry Allowed to Obtain Clothing or Identification.** Following the arrest of a person outside a residence, a law enforcement officer may accompany the arrestee "into his residence to obtain clothing or identification." [Debusse](#), 289 F.3d at 1075. See, e.g., [Washington v. Chrisman](#), 455 U.S. 1, 7 (1982) (Where arrestee requested to enter residence to obtain identification, Court found officer acted lawfully in accompanying him into his room for the purpose of obtaining identification. "The officer had a right to remain literally at Overdahl's elbow at all times; nothing in the Fourth Amendment is to the contrary"); [United States v. Gwinn](#), 219 F.3d 326, 333 (4th Cir.), cert. denied, 531 U.S. 1025 (2000) (Where arrestee was wearing only blue jeans at the time of his arrest, trooper's reentry to obtain clothing was lawful because "it was the troopers' duty to look after the reasonable safety requirements of persons in their custody." When the police neither manipulate nor use the situation as a pretext to carry out an otherwise impermissible search, the conduct of the police in deciding to dress the suspect is reasonable. [United States v. Nascimento](#), 491 F.3d 25 (1st Cir. 2007). See also [United States v. Butler](#), 980 F.2d 619, 622 (10th Cir. 1992).

(Where arrestee had no shoes and officer observed broken glass on the ground, entry into residence to obtain shoes was permissible, because of “the presence of a legitimate and significant threat to the health and safety of the arrestee,” and because “there [was] no evidence in the ... record that the concern for the arrestee's health and safety was pretextual”).

- (2) **Entry Not Allowed to Obtain Clothing or Identification.** Alternatively, both the Sixth and Ninth Circuits have rejected this exception to the general rule. See [United States v. Kinney](#), 638 F.2d 941, 945 (6th Cir.), cert. denied, 452 U.S. 918 (1981)(Entry was impermissible where “the defendant did not request permission to secure additional clothing and did not consent to an entry of his home”); [United States v. Whitten](#), 706 F.2d 1000, 1016 (9th Cir. 1983), cert. denied, 465 U.S. 1100 (1984)(Entry unlawful absent “a specific request or consent”).

- 3) **Containers That are Within an Arrestee's “Immediate Control” May Be Searched Incident to Arrest.** A law enforcement officer may search a container that is within the arrestee's immediate control at the time of the arrest. This could include, for example, an arrestee's wallet, backpack, briefcase, or luggage. See, e.g., [United States v. Uricoechea-Casallas](#), 946 F.2d 162 (1st Cir. 1991) (Wallet); [United States v. Tavalacci](#), 895 F.2d 1423 (D.C. Cir. 1990)(Locked suitcase); [United States v. Swann](#), 149 F.3d 271, 273 (4th Cir. 1998)(Film canister); [United States v. Ivy](#), 973 F.2d 1184, 1187 (5th Cir. 1992)(Briefcase); [United States v. Richardson](#), 121 F.3d 1051, 1056 (7th Cir. 1997) (Shaving bag); [United States v. Oakley](#), 153 F.3d 696, 698 (8th Cir. 1998)(Backpack).
- 4) **“Immediate Control” is Determined at the Time of Arrest, Not the Time of Search.** The area to be searched incident to a lawful arrest is that area under the arrestee's immediate control at the time of the

arrest, not the time of the search. For example, in [In Re Sealed Case 96-3167](#), 153 F.3d 759 (D.C. Cir. 1998), the defendant was convicted of drugs and weapons charges based upon evidence uncovered during a search incident to arrest of a bedroom. Although the defendant had been arrested in the bedroom, he challenged the legality of the search, claiming that, “although the ... bedroom was the room in which he had been arrested ... he was at the bottom of the stairs by the time the bedroom was searched. By that time, the large bedroom was no longer under his ‘immediate control.’” [Id.](#) at 767 (footnote omitted). The court rejected this argument, finding that “the critical time for analysis is the time of the arrest and not the time of the search.” [Id.](#) Thus, “the area under a defendant’s ‘immediate control’ for [Chimel](#) purposes must be examined as of the time the arrest occurs.” See also [Abdul-Saboor](#), 85 F.3d at 668 (“The determination of immediate control must be made when the arrest occurs”); [United States v. Hudson](#), 100 F.3d 1409, 1419 (9th Cir. 1996)(Search incident to arrest “may be conducted shortly after the arrestee has been removed from the area, provided that (1) the search is restricted to the area that was ‘within the arrestee’s immediate control when he was arrested,’ and (2) events occurring after the arrest but before the search incident to arrest did not render the search unreasonable”)(citations omitted).

- c. **When a Suspect is Arrested In a Vehicle, a Bright-Line Rule has Been Adopted by the Supreme Court.** When the occupant of a vehicle is arrested, the scope of a search incident to arrest of that vehicle is outlined in [New York v. Belton](#), 453 U.S. 454 (1981), which established a bright-line rule for vehicles.

- 1) **The Passenger Compartment of a Vehicle May Be Searched Incident to the Arrest of an Occupant.** [Chimel](#) established that a search incident to arrest may be conducted on the arrestee’s person and those areas “within the immediate control of the arrestee” at the time of the arrest. In [Belton](#), supra, the Supreme Court established the following bright-line rule for vehicles: “When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.” [Id.](#) at 460. This “bright-line” rule was

based on the “generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or [evidence].” *Id.* (internal quotation marks and citation omitted).

- 2) **The Phrase “Passenger Compartment” Has Been Defined Broadly By the Courts.** “Courts have interpreted the ‘passenger compartment’ requirement broadly in order to effectuate its purpose of protecting police officers and citizens from defendants reaching for a weapon or destroying evidence.” [United States v. Veras](#), 51 F.3d 1365, 1371 (7th Cir.), *cert. denied*, 516 U.S. 999 (1995). Generally speaking, this means that “areas reachable by an occupant without exiting the automobile may be searched incident to arrest, but an area that is outside any occupant’s reach or that could be reached only through an elaborate dismantling of the vehicle may not be searched.” [United States v. Barnes](#), 374 F.3d 601, 604 (8th Cir. 2004). Of course, “[t]he lawfulness of the search does not depend on whether the occupant was *actually capable* of reaching the area during the course of the police encounter. ... As long as an occupant could have reached an area while inside the vehicle, then the police may search that area incident to a lawful arrest.” *Id.* at 604(emphasis in original). In light of this broad interpretation, courts have upheld searches of the following areas as part of the “passenger compartment” of the vehicle:

- a) **Hatchbacks.** [United States v. Mayo](#), 394 F.3d 1271 (9th Cir. 2005), *cert. denied* 125 S.Ct 1749 (hatchback is part of the passenger compartment); [United States v. Caldwell](#), 97 F.3d 1063, 1067 (8th Cir. 1996)(“Following appellant’s arrest, the police could lawfully search the passenger compartment of the car, including the hatchback portion of the car”); [United States v. Doward](#), 41 F.3d 789, 794 (1st Cir. 1994), *cert. denied*, 514 U.S. 1074 (1995)(In finding search of hatchback permissible, court noted that “[Belton](#) unmistakably foreclose[d] ... inquiries on actual ‘reachability,’” thus the only question that must be addressed in these situations is

whether “the area to be searched is generally reachable without exiting the vehicle, without regard to the likelihood in the particular case that such a reaching was possible”)(internal quotation marks and citation omitted); [United States v. Russell](#), 670 F.2d 323, 327 (D.C. Cir.), *cert. denied*, 457 U.S. 1108 (1982) (Holding that “a hatchback reachable without exiting the vehicle properly ranks as part of the interior or passenger compartment”); [United States v. Rojo-Alvarez](#), 944 F.2d 959, 970 (1st Cir. 1991)(Court found the search of a hatch area lawful under [Belton](#) because the hatch area was “within the defendant’s reach”);

- b) **Interior of a Van.** *United States v. Green*, 178 F.3d 1099 (10th Cir. 1999) (entire interior of van is part of passenger compartment); [United States v. Lacey](#), 86 F.3d 956 (10th Cir.), *cert. denied*, 519 U.S. 944 (1996) (same); [United States v. Green](#), 178 F.3d 1099 (10th Cir. 1999) (same);

- c) **Cargo Area of an SUV or Station Wagon.** *United States v. Olguin-Rivera*, 168 F.3d 1203, 1204 (10th Cir. 1999) (Holding that “officers may search the entire passenger compartment, including the interior cargo or luggage area, of sport-utility vehicles or similarly configured automobiles, whether covered or uncovered,” and basing its finding in part on the fact that “trunks are inaccessible from the passenger compartment, whereas the cargo area in the vehicle in this case, whether covered or not, [was] still accessible to the vehicle’s occupants”); *see also* [United States v. Pino](#), 855 F.2d 357 (6th Cir. 1988) (cargo area of a station wagon is part of passenger compartment); and [United States v. Henning](#), 906 F.2d 1392 (10th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991), a full search of the interior of a Chevrolet Suburban was found to be Constitutional under [Belton](#). According to the court, “where ... the vehicle contains no trunk, the entire inside of the vehicle constitutes the passenger compartment and may be lawfully searched.” *Id.* at 1396.

- d) **Trunk Accessible by Fold Down Seats or Armrest.** United States v. Arnold, 388 F.3d 237 (7th Cir. 2004) (back seat armrest access to trunk made trunk accessible as part of passenger compartment);
 - e) **Space Behind a Radio or Heating Vent in a Dashboard,** United States v. Willis, 37 F.3d 313, 316 (7th Cir. 1994); United States v. Patrick, 3 F. Supp. 2d 95, 99 (D. Mass 1998);
 - f) **Secret Compartment in the Backseat of the Vehicle,** Veras, 51 F.3d at 1372; United States v. Poggemiller, 375 F.3d 686, 688 (8th Cir. 2004);
 - g) **Inside Bicycle Handlebars,** United States v. Currence, 446 F. 3d 554 (4th Cir. 2006).
- d. **Containers Located in a Vehicle May Be Searched Incident to the Arrest of an Occupant.** In Belton, the Supreme Court additionally held that “the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.” Belton, 453 U.S. at 460 (citation and footnote omitted).
- 1) **The Definition of a “Container.”** A “container” was defined as “any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like.” Belton, 453 U.S. at 461 n.4.
 - 2) **Based on Case Law, a Locked Container in a Vehicle Can Probably Be Searched Incident to the Arrest of an Occupant.** While this definition does not expressly address “locked” containers, several subsequent federal cases can be interpreted as including locked containers within the scope of a lawful search incident to arrest. See Knowles, 525 U.S. at 118 (Law enforcement officers may “even conduct a full search of the passenger compartment, including *any* containers therein, pursuant to a custodial arrest”)(emphasis added); United States v. Tavalacci, 895 F.2d 1423, 1428 (D.C. Cir. 1990)(locked bag); United States v. Gonzalez, 71 F.3d 819, 825-26 (11th Cir. 1996)(Belton rule allowed

searches of glove boxes, locked or unlocked); [United States v. Valiant](#), 873 F.2d 205, 206 (8th Cir. 1989)(locked briefcase was closed container within the vehicle that could be lawfully searched incident to arrest); [United States v. Woody](#), 55 F.3d 1257, 1269-70 (7th Cir. 1995)(search of locked glove box reasonable during search incident to arrest). Further, two of the Justices who disagreed with the majority's decision in [Belton](#) seemed to concede that locked containers fall within the parameters outlined in that case. [Belton](#), 453 U.S. at 469 (Brennan, J., dissenting)(Noting that result in [Belton](#) would have been the same even if "search had extended to locked luggage or other inaccessible containers located in the back seat of the car"); [Id.](#) at 453 U.S. 472 (White, J., dissenting)([Belton](#) rule allows "interior of the car and any container found therein, whether locked or not" to be searched incident to lawful arrest).

- e. **The Trunk of a Vehicle May Not Be Searched Incident to the Arrest of an Occupant.** The trunk of a vehicle, however, is not within the immediate control of an arrestee and cannot be searched during a search incident to arrest. [Belton](#), 453 U.S. at 461 n.4 ("Our holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk"). See also [United States v. Thompson](#), 906 F.2d 1292, 1298 (8th Cir.), cert. denied, 498 U.S. 989 (1990); [United States v. Hernandez](#), 901 F.2d 1217, 1220 (5th Cir. 1990); [United States v. Schechter](#), 717 F.2d 864, 868 (3rd Cir. 1983); [United States v. Freire](#), 710 F.2d 1515, 1521 (11th Cir. 1983), cert. denied, 465 U.S. 1023 (1984); [United States v. Wright](#), 932 F.2d 868, 878 (10th Cir. 1991).

- f. **When a Recent Occupant of a Vehicle is Arrested, Police May Typically Search the Vehicle Incident to Arrest.**
- 1) In [Thornton v. United States](#), 541 U.S. 615 (2004), the Supreme Court addressed whether the rule of [Belton](#), discussed above, "is limited to situations where the officer makes contact with the occupant while the occupant is inside the vehicle, or whether it applies as well when the officer first makes contact with the arrestee after the latter has stepped out of his vehicle." [Id.](#) at 619. In finding "no basis to conclude that the span of the area generally within the arrestee's immediate control is determined by whether

the arrestee exited the vehicle at the officer's direction, or whether the officer initiated contact with him while he remained in the car," id. at 620-21, the Court noted that, "[i]n all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle." id. at 621. Further, "[i]n either case, the officer faces a highly volatile situation," id., and, stated the Court, it "would make little sense to apply two different rules to what is, at bottom, the same situation." id. In fact, the Court suggested that "[i]n some circumstances it may be safer and more effective for officers to conceal their presence from a suspect until he has left his vehicle." id.

- 2) For those reasons, the Court held that "[s]o long as an arrestee is ... [a] 'recent occupant' of a vehicle ... officers may search that vehicle incident to the arrest." id. at 623-24. See also United States v. Herndon, 393 F.3d 665, 668 (6th Cir. 2005) (Search of truck permissible under Thornton "recent occupant" theory because "when the police approached Herndon, the door of his truck was still open and he was standing only a few feet away.")

NOTE: On February 25, 2008, the Supreme Court granted certiorari in State v. Gant, 162 P.3d 640 (Ariz. 2007), to decide the following question: "Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?" 2008 U.S. LEXIS 2022 (2008). This precise issue was not addressed in Thornton v. United States, 541 U.S. 615 (2004). Although it may seem like hair splitting, the Thornton Court simply held that the interests that make SIAs reasonable – safety and preservation of evidence – do not evaporate when officers apprehend an arrestee who has recently exited a vehicle. The Court will have to decide in Gant, however, whether an arrestee's apparent inability to access a weapon or destroy

evidence renders the SIA of his vehicle unreasonable. See, e.g., United States v. Green, 324 F.3d 375, 378-79 (5th Cir. 2003) (rationale for search of vehicle incident to arrest is not present when defendant is arrested ten feet from his vehicle, placed on the ground, handcuffed, and surrounded by four officers, as there was no concern that defendant would reach a weapon or evidence inside the vehicle).

- g. **In the Majority of Circuits, a Search Incident to Arrest of a Vehicle is Allowed Even When the Suspect Has Been Removed From the Vehicle by Police.** Often, a suspect arrested in a vehicle will be removed from the vehicle, handcuffed, and placed in a police car. The question in such cases is whether a search incident to arrest of the vehicle may still be performed. The majority of circuits that have addressed the issue have answered in the affirmative. See, e.g., Willis, 37 F.3d at 317 (“[O]fficers may conduct valid searches incident to arrest even when the officers have secured the suspects in a squad car and rendered them unable to reach any weapon or destroy evidence”); United States v. Patterson, 993 F.2d 121, 123 (6th Cir. 1993) (“Police may search a vehicle incident to arrest even after the arrestee was handcuffed and placed in the backseat of a police cruiser”); United States v. Lacey, 86 F.3d 956, 971 (10th Cir.), cert. denied, 519 U.S. 944 (1996) (“Where an officer has made a lawful arrest of a suspect in an automobile, the officer may seize items of evidence found within the passenger compartment of the vehicle as part of a search incident to a lawful arrest, even when the suspect is outside of the vehicle and handcuffed”); United States v. Jackson, 918 F.2d 236, 240 (1st Cir. 1990) (Arrestee handcuffed in police vehicle); *But see* United States v. Vasey, 834 F.2d 782 (9th Cir. 1987) (Where the defendant was the only person arrested, was handcuffed, was located in the rear of a police vehicle, and officers stood watch while the search was performed, search incident to arrest was impermissible because “Chimel does not allow the officers to presume that an arrestee is superhuman”).

V. **EPO #22: IDENTIFY CIRCUMSTANCES WHERE A SUSPECT’S CONSENT TO SEARCH IS VOLUNTARY.**

1. **General Rule – Consent Searches are an Exception to the Warrant Requirement.** “It is ... well-settled that one of the

specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” [Schneckloth v. Bustamonte](#), 412 U.S. 218, 219 (1973)(citation omitted). See also [United States v. Rodriguez](#), 367 F.3d 1019, 1027 (8th Cir. 2004)(“The Fourth Amendment’s general prohibition against warrantless searches does not apply when officers obtain a voluntary consent from the person whose property is searched or from a third party with common authority over the property”)(citation omitted); [United States v. Ringold](#), 335 F.3d 1168, 1174 (10th Cir.), cert. denied, 540 U.S. 1026 (2003)(“It has long been established that an officer may conduct a warrantless search consistent with the Fourth Amendment if the challenging party has previously given his or her voluntary consent to that search”).

2. **Neither Probable Cause Nor Reasonable Suspicion is Required for a Consent Search.** When a law enforcement officer obtains valid consent to search a given area or object, neither reasonable suspicion, nor probable cause, is required. Thus, “in situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by valid consent may be the only means of obtaining important and reliable evidence.” [Schneckloth](#), 412 U.S. at 227. See also [United States v. Del Rosario](#), 388 F.3d 1, 13 (1st Cir. 2004) (“At the risk of belaboring the obvious, a supportable finding of consent eliminates the need for either a search warrant or probable cause”).
3. **Consent Searches Have Two Requirements.** Generally speaking, there are two (2) requirements for a consent search to be valid.
 - a. **Voluntary.** First, the consent to search must be voluntarily given. See, e.g., [United States v. Bernitt](#), 392 F.3d 873, 876 (7th Cir. 2004)(citation omitted)(noting that, “the consent to a police search must be voluntary”).
 - b. **Actual or Apparent Authority.** Second, the consent must be given by an individual with either actual or apparent authority over the place to be searched. **This second requirement will be discussed in detail in EPO # 23.**
4. **The First Element of a Valid Consent Search is That the Consent Be Given Voluntarily.** Both “the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force.” [Schneckloth](#), 412 U.S. at 228. To say that consent was given “voluntarily” means the consent “was not the product of duress or coercion, express or implied” [Bernitt](#), 392 F.3d at 876 (citation omitted). In making this determination, courts will look at the “totality of the

circumstances” surrounding the giving of the consent, because “it is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced.”

Id. at 233.

a. **Courts Consider Numerous Factors in Deciding Whether Consent was Voluntarily Given.** Factors to consider in making a voluntariness determination include, but are not limited to:

- 1) **The Age, Education, and Intelligence of the Individual,** Id. at 226; United States v. Asibor, 109 F.3d 1023, 1038 n.14 (5th Cir.), cert. denied, 522 U.S. 902 (1997); United States v. Smith, 260 F.3d 922, 924 (8th Cir. 2001); United States v. Givan, 320 F.3d 452, 459 (3d Cir. 2003)(Noting “the critical factors comprising a totality of the circumstances inquiry ... include[e] ... the age, intelligence, and educational background of the consenting individual”); United States v. Ivy, 165 F.3d 397, 402 (6th Cir. 1998); United States v. Lattimore, 87 F.3d 647, 650 (4th Cir. 1996); United States v. Taylor, 196 F.3d 854, 860 (7th Cir. 1999), cert. denied, 529 U.S. 1081 (2000); United States v. Blake, 888 F.2d 795, 798 (11th Cir. 1989).
- 2) **The Individual’s Knowledge of His or Her Right to Refuse to Give Consent,** Schneckloth, 412 U.S. at 227 (“While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the *sine qua non* of an effective consent”)(emphasis in original); United States v. Watson, 423 U.S. 411, 424 (1976)(Noting “the absence of proof that [the suspect] knew he could withhold his consent, though it may be a factor in the overall judgment, is not to be given controlling significance”); Asibor, 109 F.3d at 1038 n.14; United States v. Perez, 72 Fed. Appx. 857, 859 (2d Cir. 2003) (unpublished) (Noting that, “although the knowledge of the right to refuse consent may be a factor in considering whether consent is voluntary ... failure to inform a suspect of his rights does not automatically render a consent involuntary”); United States v. Jones, 286 F.3d 1146, 1152 (9th Cir. 2002); Ivy, 165 F.3d at 402; Blake, 888 F.2d at 798.
- 3) **The Length of the Detention,** Schneckloth, 412 U.S. at 226; Smith, 260 F.3d at 924 (Factors to consider include “the length of time [the suspect] was detained”); Hubbard v. Haley, 317 F.3d 1245, 1253

(11th Cir. 2003); [Ivy](#), 165 F.3d at 402; [Lattimore](#), 87 F.3d at 650; [Taylor](#), 196 F.3d at 860.

- 4) **The Repeated and Prolonged Nature of the Questioning**, [Schneckloth](#), 412 U.S. at 226; [Hubbard](#), 317 F.3d at 1253.
- 5) **Whether the Consent was Given in Writing**, [Navarro](#), 90 F.3d at 1257; [United States v. Boone](#), 245 F.3d 352, 362 (4th Cir.), cert. denied, 532 U.S. 1031 (2001)(“Written consent supports a finding that the consent was voluntary”).
- 6) **The Use of Physical Punishment, Such as Deprivation of Food or Sleep**, [Schneckloth](#), 412 U.S. at 226; [Watson](#), 423 U.S. at 424 (Consent upheld because, *inter alia*, “[t]here was no overt act or threat of force against [the suspect] proved or claimed”); [Smith](#), 260 F.3d at 924 (Factors to consider include “whether the police threatened, physically intimidated, or punished [the suspect]”); [Hubbard](#), 317 F.3d at 1253; [Ivy](#), 165 F.3d at 402.
- 7) **Whether the Individual Cooperated in the Search**, [United States v. Carrate](#), 122 F.3d 666, 670 (8th Cir. 1997)(Suspect “idly stood by while the troopers searched his car, never indicating that he objected to the search”) and [United States v. McSween](#), 53 F.3d 684, 688 (5th Cir.), cert. denied, 516 U.S. 874 (1995)(Defendant voluntarily consented to search where he assisted officers through removal of paneling in hatchback); [Givan](#), 320 F.3d at 459 (Noting “the critical factors comprising a totality of the circumstances inquiry ... include[e] ... the parties' verbal and non-verbal actions ...”); [Blake](#), 888 F.2d at 798.
- 8) **Whether the Suspect was in Custody at the Time the Consent was Given**, [Watson](#), 423 U.S. at 424 (While noting that custody is a factor to be considered, Court emphasized that “the fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search”); see also [United States v. Renken](#), 474 F.3d 984 (7th Cir. 2007) (consent to search can be voluntarily given even when a defendant is in custody without having received Miranda warnings. Custody alone has never been enough in itself to demonstrate a coerced confession or consent to search); [Smith](#),

260 F.3d at 924 (One factor to consider was “whether [the suspect] was in custody or under arrest when the consent was given”); [Asibor](#), 109 F.3d at 1038 n.14; [Jones](#), 286 F.3d at 1152; [Taylor](#), 196 F.3d at 860; [Blake](#), 888 F.2d at 798.

NOTE: It should be remembered that “[c]onsent given during an illegal detention is presumptively invalid.” [United States v. Cellitti](#), 387 F.3d 618, 622 (7th Cir. 2004). However, “the consent may nevertheless be valid provided that it is sufficiently attenuated from the illegal police action to dissipate the taint.” [Id.](#) at *10.

- 9) **The Suspect’s Belief That No Incriminating Evidence Will Be Found**, [Asibor](#), 109 F.3d at 1038 n.14; [Blake](#), 888 F.2d at 798.
- 10) **The Presence of Coercive Police Procedures, Such as Displaying Weapons or Using Force**, [Orhorhaghe v. Immigration and Naturalization Service](#), 38 F.3d 488, 500 (9th Cir. 1994); [Asibor](#), 109 F.3d at 1038 n.14.; [Taylor](#), 196 F.3d at 860; [Blake](#), 888 F.2d at 798.
- 11) **The Suspect’s Experience in Dealing With Law Enforcement Officers**, [Watson](#), 423 U.S. at 424-25 (Consent upheld in part because “[t]here [was] no indication in this record that [the suspect] was a newcomer to the law”); [Smith](#), 260 F.3d at 924 (Factors to consider include “whether [the suspect] had experienced prior arrests and was thus aware of the protections that the legal system affords to suspected criminals”); [Lattimore](#), 87 F.3d at 650; [United States v. Barnett](#), 989 F.2d 546, 556 (1st Cir. 1993)(defendant had eighteen prior arrests).
- 12) **Whether the Suspect was Under the Influence of Any Drugs or Alcohol**, [Smith](#), 260 F.3d at 924.
- 13) **Whether the Suspect was Notified of his Miranda Rights**, [Watson](#), 423 U.S. at 425; [Smith](#), 260 F.3d at 924; [Jones](#), 286 F.3d at 1152; [Taylor](#), 196 F.3d at 860.
- 14) **Whether the Police Made Promises or Misrepresentations**, [Watson](#), 423 U.S. at 424 (Suspect’s consent upheld because, *inter alia*, “[t]here were no promises made to him and no indication of more subtle forms of coercion that might flaw his

judgment”); [Smith](#), 260 F.3d at 924; [Hubbard](#), 317 F.3d at 1253; [Ivy](#), 165 F.3d at 402; [Hadley v. Williams](#), 368 F.3d 747, 749 (7th Cir. 2004)(In finding consent obtained based upon a lie regarding the existence of an arrest warrant, court noted that, “[a]lthough ‘the law permits the police to pressure and cajole, conceal material facts, and actively mislead,’ it draws the line at outright fraud”).

- 15) **The Location Where the Consent was Given**, [Watson](#), 423 U.S. at 424 (Suspect’s consent found valid in part because “consent was given while on a public street, not in the confines of the police station”); [Smith](#), 260 F.3d at 924 (Factors to consider include “whether the consent occurred in a public or a secluded place”); [Givan](#), 320 F.3d at 459 (Noting “the critical factors comprising a totality of the circumstances inquiry ... include[e] ing the setting in which the consent was obtained ...”); [Lattimore](#), 87 F.3d at 650.
- 16) **Whether the Defendant Had Been Told a Search Warrant Could Be Obtained**, [Jones](#), 286 F.3d at 1152. In such situations, application of this factor “hinges on whether a suspect is informed about the possibility of a search warrant in a threatening manner.” [United States v. Soriano](#), 346 F.3d 963, 971 (9th Cir. 2003)[citing [United States v. Cormier](#), 220 F.3d 1103, 1112 (9th Cir. 2000), cert. denied, 531 U.S. 1174 (2001)]. However, “when probable cause to justify a warrant exists, the weight of [this] ... factor is significantly diminished.” [Soriano](#), 346 F.3d at 971.
- 17) **Whether There Were Repeated Requests for Consent**, [Taylor](#), 196 F.3d at 860. *But see* [United States v. Jones](#), 254 F.3d 692, 696 (8th Cir. 2001)(Noting “there is certainly no legal rule that asking more than once for permission to search renders a suspect’s consent involuntary, particularly where the suspect’s initial response is ambiguous”).

- b. **Acquiescence to Law Enforcement Will Result in Consent Being Found Involuntary.** “There can be no effective consent to a search or seizure if that consent follows a law enforcement officer’s assertion of an independent right to engage in such conduct.” [Orhorhaghe v. Immigration and Naturalization Service](#), 38 F.3d 488, 500 (9th Cir. 1994); see also [Bumper v. North Carolina](#), 391 U.S. 543 (1968). For example, when an individual gives consent for a search only

after a law enforcement officer asserts that he or she has a warrant, the consent is not truly being given voluntarily, in that the officer is “announcing in effect that the [individual] has no right to resist the search.” [Bumper](#), 391 U.S. at 550. In [Orhorhaghe](#), the court found the suspect’s consent had not been voluntarily given because, among other things, a law enforcement officer had informed him “he (the officer) didn’t need a warrant.” This statement on the part of the law enforcement officer “constituted ... an implied claim of a right to conduct the search.” *Id.* at 501. See also [United States v. Cedano-Medina](#), 366 F.3d 682, 684 (8th Cir. 2004) (Burden of proving consent is on government, and such burden “is not satisfied by showing a mere submission to a claim of lawful authority”)[*quoting United States v. \$ 404,905.00*, 182 F.3d 643, 649 n.3 (8th Cir. 1999)].

- c. **The Burden of Proving Consent was Voluntarily Given Rests With the Government.** The burden of proving that the consent was voluntarily given rests with the prosecutor, and “cannot be discharged by showing no more than acquiescence to a claim of lawful authority.” [Bumper](#), 391 U.S. at 550.

5. **Consent May Be Inferred From a Defendant’s Words or Actions.** Consent may be expressly sought from and given by a defendant. However, consent may also be inferred from a defendant’s words or actions, so long as they are sufficiently comprehensible to a reasonable officer. [United States v. Hylton](#), 349 F.3d 781, 786 (4th Cir. 2003); [United States v. Guerrero](#), 472 F.3d 784 (10th Cir. 2007) (a defendant’s consent must be clear, but it need not be verbal). See also [Jones](#), 254 F.3d at 695 (“Consent can be inferred from words, gestures, and other conduct”); [United States v. Carter](#), 378 F.3d 584, 587 (6th Cir. 2004) (Same); [United States v. Wesela](#), 223 F.3d 656, 661 (7th Cir. 2000), *cert. denied*, 531 U.S. 1174 (2001) (“The fact that there was no direct verbal exchange between [the officer and the third party] in which [the third party] explicitly said ‘it’s o.k. with me for you to search the apartment,’ is immaterial, as the events indicate her implicit consent”); [United States v. Buettner-Janusch](#), 646 F.2d 759, 764 (2d Cir.), *cert. denied*, 454 U.S. 830 (1981) (“Moreover, it is well settled that consent may be inferred from an individual’s words, gestures, or conduct”).

NOTE: An example of how an individual’s consent may be inferred from their gestures or conduct is presented in [United States v. Carter](#), 378 F.3d 584 (6th Cir. 2004). Here, uniformed police officers knocked on a defendant’s hotel room door. When the defendant answered the door, the officers asked for permission to enter. At that point, the defendant “stepped

back and cleared a path for the officers to enter.” [Id.](#) at 587. According to the court, “[a]ny ordinary caller, under like circumstances, would understand assent to have been given, and the police are not held to a higher standard in this regard than an ordinary person.” [Id.](#) at 588. See also [Robbins v. MacKenzie](#), 364 F.2d 45, 49 (1st Cir.), [cert. denied](#), 385 U.S. 913 (1966)(“An ordinary person who knocks on a door and receives assent may properly consider himself an invited guest Similarly, the Fourth Amendment ... does not require [a police officer] to be clairvoyant”).

6. **Miranda Rights Are Not Required Before Seeking Consent.** If a suspect is under arrest, there is no requirement that law enforcement officers notify the individual of his or her [Miranda](#) rights prior to requesting consent, even if the individual has previously invoked his right to silence or right to counsel. “A consent to search is not the type of incriminating statement toward which the Fifth Amendment is directed. It is not in itself ‘evidence of a testimonial or communicative nature.’” [United States v. Lemon](#), 550 F.2d 467, 472 (9th Cir. 1977). See also [United States v. Lee](#), 356 F.3d 831, 834 (8th Cir. 2003)(“[Miranda](#) warnings, however, are not required for consent to a search to be voluntary, although they can lessen the probability that a defendant was subtly coerced”); [United States v. McClellan](#), 165 F.3d 535, 544 (7th Cir.), [cert. denied](#), 526 U.S. 1125 (1999)(Noting that “consent to search is not an interrogation within the meaning of [Miranda](#),” so warnings not required before seeking consent even after suspect had previously invoked his right to counsel); [United States v. Knight](#), 58 F.3d 393, 397 (8th Cir. 1995), [cert. denied](#), 516 U.S. 1099 (1996)(Holding “the Fifth Amendment’s protection against self-incriminating statements may limit further interrogation once a person in custody invokes his right to counsel, but there is no similar prohibition on securing a voluntary consent to search for physical evidence”); [Cody v. Solem](#), 755 F.2d 1323, 1330 (8th Cir.), [cert. denied](#), 474 U.S. 833 (1985) (“Simply put, a consent to search is not an incriminating statement”); [Smith v. Wainwright](#), 581 F.2d 1149, 1152 (5th Cir. 1978)(“A consent to search is not a self-incriminating statement”); [United States v. Faruolo](#), 506 F.2d 490, 495 (2d Cir. 1974)(“There is no possible violation of Fifth Amendment rights since consent to search is not ‘evidence of a testimonial or communicative nature.’”). *But see* [United States v. Fleming](#), 31 F. Supp. 2d 3, 5 (D.D.C. 1998)(Holding consent to search invalid since it was given after suspect invoked his right to counsel)

W. **EPO #23: IDENTIFY THE CIRCUMSTANCES IN WHICH A THIRD PARTY HAS THE ACTUAL OR APPARENT AUTHORITY TO GRANT CONSENT TO SEARCH A SUSPECT'S PROPERTY**

1. **The Second Requirement of a Valid Consent Search is That the Consent Be Given By Someone With Actual or Apparent Authority.**

The second requirement for a consent search is that the consent must be given by an individual with either actual or apparent authority over the place to be searched. See, e.g., [Kimoana](#), 383 F.3d at 1221 (“A third party’s consent to search is valid if that person has either the ‘actual authority’ or the ‘apparent authority’ to consent to a search of that property”); [United States v. James](#), 353 F.3d 606, 613 (8th Cir. 2003)(“Consent to search ... may be given either by the suspect or by some other person who has common authority over, or sufficient relationship to, the item to be searched”).

a. **An Individual Who Actually Owns or Controls An Item Has “Actual” Authority to Consent to a Search.** “Actual” authority may be obtained “from the individual whose property is searched.” [Illinois v. Rodriguez](#), 497 U.S. 177, 181 (1990)(citation omitted).

b. **An Third Party Who Has Common Authority Over an Item or Area May Consent to a Search.** Additionally, consent to search may be given by a third party “who possesses common authority over or other sufficient relationship to the ... effects sought to be inspected.” [United States v. Matlock](#), 415 U.S. 164, 171 (1974). “[A] third party has authority to consent to a search of a home when that person (1) has access to the area searched and (2) has either (a) common authority over the area, (b) a substantial interest in the area, or (c) permission to gain access to the area. [Moore v. Andreno](#), 505 F.3d 203, 208-09 (2nd Cir. 2007).

As noted by the Supreme Court in [Matlock](#):

“Common authority is, of course, not to be implied from the mere property interest a third-party has in the property. The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements ..., but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might

permit the common area to be searched.” [Id.](#) at 172 n.7.

Indicators of common authority include “(1) possession of a key to the premises; (2) a person’s admission that she lives at the residence in question; (3) possession of a driver’s license listing the residence as the driver’s legal address; (4) receiving mail and bills at that residence; (5) keeping clothing at the residence; (6) having one’s children reside at that address; (7) keeping personal belongings such as a diary or pet at that residence; (8) performing household chores at that residence; (9) being on the lease for the premises and/or paying rent; and (10) being allowed into the resident when the owner is not present.” [United States v. Groves](#), 470 F.3d 311, 319 (7th Cir. 2006) (internal citations omitted). See also [James](#), 353 F.3d at 613 (“Common authority is a function of mutual use, joint access, and control ...”); [Kimoana](#), 383 F.3d at 1222 (Third party consent to search motel room upheld where, “[a]lthough Defendant was not the registered guest who had paid for the room, he had stayed there overnight, left his possessions there, and carried a key to the room”); [United States v. Davis](#), 332 F.3d 1163, 1169 (9th Cir. 2003)(“A third party has actual authority to consent to a search of a container if the owner of the container has expressly authorized the third party to give consent or if the third party has mutual use of the container and joint access to or control over the container”); [United States v. Rith](#), 164 F.3d 1323, 1329 (10th Cir.), [cert. denied](#), 528 U.S. 827 (1999)(Noting “a third party has authority to consent to a search of property if that third party has either (1) mutual use of the property by virtue of joint access, or (2) control for most purposes over it”); [United States v. Aghedo](#), 159 F.3d 308, 310 (7th Cir. 1998) (“Common authority is based upon mutual use of property by persons generally having joint access or control”).

- c. **An Individual Whom the Police Reasonably, Albeit Mistakenly, Believe Has Authority to Consent May Have “Apparent” Authority.** Consent may also be obtained from an individual who has “apparent” authority over the place or item to be searched. This typically occurs when law

enforcement officers conduct a warrantless search of an object based upon the consent of a third-party whom the officers, at the time of the search, reasonably, albeit erroneously, believed possessed common authority over the object. [Rodriguez](#), 497 U.S. at 186. If the officers' belief is "reasonable," considering all of the facts available to them at the time the search is conducted, the search will still be valid. See also [Cedano-Medina](#), 366 F.3d at 684-85 (Noting "a person can render a search legal by behaving in a way that could cause a reasonable person to believe that he or she has knowingly and voluntarily consented, whether or not the person actually intends to consent"); [United States v. Sanchez](#), 156 F.3d 875, 878 (8th Cir. 1998) ("Finally, whether or not the suspect has actually consented to a search, the Fourth Amendment requires only that the police reasonably believe the search to be consensual"); [United States v. Jenkins](#), 92 F.3d 430, 436 (6th Cir. 1996), cert. denied, 520 U.S. 1170 (1997) ("When one person consents to a search of the property owned by another, the consent is valid if 'the facts available to the officer at the moment ... warrant a man of reasonable caution in the belief that the consenting party had authority over the premises'") (citation omitted); [United States v. Elliott](#), 50 F.3d 180, 187 (2d Cir. 1995), cert. denied, 516 U.S. 1050 (1996); [United States v. Saadeh](#), 61 F.3d 510, 517-518 (7th Cir.), cert. denied, 516 U.S. 990 (1995).

- d. **Property Ownership is Not Dispositive in Determining Who Has Consent to Search.** As note above, the Supreme Court has "expressly downplayed the significance of property ownership when deciding whether a third party possessed common authority to consent." [United States v. Shelton](#), 337 F.3d 529, 532 n.11 (5th Cir. 2003).

2. **The Scope of a Consent Search is Generally Defined by the Consent Given.** "Warrantless searches may not exceed the scope of the consent given." [United States v. Marshall](#), 348 F.3d 281, 286 (1st Cir. 2003). "The scope of a search is generally defined by its expressed object." [Florida v. Jimeno](#), 500 U.S. 248, 251 (1991) [citing [United States v. Ross](#), 456 U.S. 798 (1982)]. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?" [Jimeno](#), 500 U.S. at 251 (citations omitted). In answering this questions, courts "look beyond the language of the consent itself, to the overall context, which necessarily encompasses contemporaneous police statements and actions." [United States v. Melendez](#), 301 F.3d 27, 32 (1st Cir. 2002) (citation omitted). See, e.g., [Hadley](#), 368 F.3d at

750 (“The fact that a person answers a knock at the door doesn’t mean that he agrees to let the person who knocked enter,” nor does telling someone to “answer the door” “necessarily mean that you’re telling him to let the person in”)[citing [Sparing v. Village of Olympia Fields](#), 266 F.3d 684, 688-90 (7th Cir. 2001); [United States v. Berkowitz](#), 927 F.2d 1376, 1387 (7th Cir.), cert. denied, 502 U.S. 845 (1991); [United States v. McCraw](#), 920 F.2d 224, 229-30 (4th Cir. 1990)].

NOTE: In situations involving requests to search vehicles, “[a] general grant of permission to search an automobile typically extends to the entire car, absent an objection or an explicit limitation by the grantee.” [United States v. Rosborough](#), 366 F.3d 1145, 1150 (10th Cir. 2004). See also [United States v. Zapata](#), 180 F.3d 1237, 1243 (11th Cir. 1999) (“A general consent to search for specific items includes consent to search any compartment or container that might reasonably contain those items”); [United States v. Ferrer-Montoya](#), 483 F.3d 565 (8th Cir. 2007) (same).

- a. **An Individual May Limit the Scope of Any Consent Given.** An individual may limit the scope of any consent. [Jimeno](#), 500 U.S. at 252 (“A suspect may of course delimit as he chooses the scope of the search to which he consents”). See also [Walter v. United States](#), 447 U.S. 649, 656 (1980)(plurality opinion)(“When an official search is properly authorized – whether by consent or by issuance of a valid warrant – the scope of the search is limited by the terms of its authorization”); [Marshall](#), 348 F.3d at 287 (“For sure, a consenting party may limit the scope of his or her consent or withdraw it altogether”); [United States v. Jones](#), 356 F.3d 529, 534 (4th Cir. 2004)(“The suspect may impose limits on the items or areas subject to the consent search, just as he may refuse to allow any search whatsoever in the absence of a warrant”). Should a law enforcement officer fail to comply with the limitations placed on the consent, “the search is impermissible.” [United States v. Strickland](#), 902 F.2d 937, 941 (11th Cir. 1990).
- b. **An Individual May Revoke Any Consent Given.** An individual may also revoke his or her consent. When consent is revoked, a law enforcement officer is required to cease searching, unless another exception to the Fourth Amendment’s warrant requirement (e.g., probable cause to search a vehicle) is present. See [United States v. Fuentes](#), 105 F.3d 487, 489 (9th Cir. 1997) (Suspect effectively revoked consent by shouting “No, wait” before officer could pull cocaine out of pocket); [United States v. Martel-Martines](#), 988

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F.2d 855, 858 (8th Cir. 1993) ("Though consent may be withdrawn, Martel-Martinez's passive conduct fell far short of the 'unequivocal act or statement of withdrawal' required"). In fact, an individual's failure to limit the scope of a search may defeat a later claim that the search exceeded the scope of the consent given. See generally [United States v. Gordon](#), 173 F.3d 761, 766 (10th Cir.), cert. denied, 528 U.S. 886 (1999) ("We consistently and repeatedly have held a defendant's failure to limit the scope of a general authorization to search, and failure to object when the search exceeds what he later claims was a more limited consent, is an indication the search was within the scope of consent").

- c. **The Scope of a Consent Search May Be Expanded Through the Suspect's Actions.** "[T]he scope of a consent search is not limited only to those areas or items for which specific verbal permission is granted." [Jones](#), 356 F.3d at 534. Instead, "[c]onsent may be supplied by non-verbal conduct as well." *Id.* See, e.g., [Garrido-Santana](#), 360 F.3d at 576 (In upholding consent search, court noted that, "although defendant had the opportunity to do so, he never objected to the officers' search of the gas tank and, thus, neither clarified that the scope of his sweeping consent excluded such a search nor revoked his consent"); [United States v. Jackson](#), 381 F.3d 984, 988 (10th Cir. 2004) ("A defendant's failure to limit the scope of a general authorization to search, and failure to object when the search exceeds what he later claims was a more limited consent, is an indication that the search was within the scope of consent"); [United States v. Mendoza-Gonzalez](#), 318 F.3d 663, 670 (5th Cir.), cert. denied, 538 U.S. 1049 (2003) ("A failure to object to the breadth of the search is properly considered an indication that the search was within the scope of the initial consent"); [United States v. Pena](#), 920 F.2d 1509, 1514-15 (10th Cir. 1990), cert. denied, 501 U.S. 1207 (1991) (Holding that a search of a vehicle's vent panel was within the scope of the defendant's consent to "look" inside the vehicle where the defendant never "attempted to limit or retract his [general] consent" upon seeing the officer begin to remove that panel).
- d. **Destruction of Property Based Upon Consent.** It is typically unreasonable to believe that an individual who has given a general consent to search is consenting to having his or her property damaged or destroyed. [Garrido-Santana](#), 360 F.3d at 576 ("A reasonable person likely would have understood his consent to exclude a search that would damage his property"). Thus, when dealing with a locked container, a law enforcement officer should seek express

permission to search that item. See, e.g., [United States v. Osage](#), 235 F.3d 518, 522 (10th Cir. 2000)(Holding that, “before an officer may actually destroy or render completely useless a container which would otherwise be within the scope of a permissive search, the officer must obtain explicit authorization, or have some other, lawful, basis upon which to proceed”); [United States v. Strickland](#), 902 F.2d 937, 942 (11th Cir. 1990)(“Although an individual consenting to a vehicle search should expect that search to be thorough, he need not anticipate that the search will involve the destruction of his vehicle, its parts or contents”). If the consent is granted, the search may proceed. In order to support the reasonableness of any such search, a law enforcement officer should refrain from damaging or destroying the container in the process of opening it. See, e.g., [United States v. Snow](#), 44 F.3d 133, 135 (2d Cir. 1995)(Upholding search of a duffel bag and another bag in part because “[n]either was locked or otherwise secured, and no damage to the bags was required to gain access”). If a key is necessary, for example, the officer should obtain the key and utilize it to gain access to the container.

3. **Third Party Consent Situations.** The types of third party consent situations that may confront a law enforcement officer are limitless. Nonetheless, some basic situations frequently arise in consent cases.
 - a. **Husband – Wife Situations.** “Absent an affirmative showing that the consenting spouse has no access to the property searched, the courts generally hold that either spouse may consent to search all of the couple’s property.” *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, DOJ, at 19 (March 2001). See also [United States v. Backus](#), 349 F.3d 1298, 1299 (11th Cir. 2003)(“Under [the] common authority doctrine, a spouse who jointly owns and occupies the marital home with the defendant may consent to a search of it with the same effect as if the defendant himself had done so”); [United States v. Robinson](#), 999 F. Supp. 155, 159 (D. Mass. 1998)(“A familial relationship, such as that of a ... husband and wife, weighs in support of authority to consent”).
 - 1). **Some Court Have Held That a Spouse Presumptively Has Authority to Consent.** At least one court has held that “a spouse presumptively has authority to consent to a search of all areas of the homestead; the nonconsenting spouse may rebut this

presumption only by showing that the consenting spouse was denied access to the particular area searched.” [United States v. Duran](#), 957 F.2d 499, 505 (7th Cir. 1992). See also [Rith](#), 164 F.3d at 1330 (“Relationships which give rise to a presumption of control of property include ... husband-wife relationships”); [United States v. Gevedon](#), 214 F.3d 807, 811 (7th Cir.), cert. denied, 531 U.S. 916 (2001)(Same).

- 2) **A Spouse’s Consent May Be Effective Even After the Spouse Leaves the Marital Home.** Several courts have held that a spouse’s consent may be effective even after he or she leaves the marital home. See, e.g., [Backus](#), 349 F.3d at 1304-05 (“Our conclusion finds support in the decisions from all of the other circuits that have addressed issues involving consent from an estranged wife to search the marital home from which she has fled, all of which uphold the resulting searches under various circumstances”); [Gevedon](#), 214 F.3d at 808-11; [United States v. Brannan](#), 898 F.2d 107, 108 (9th Cir.), cert. denied, 498 U.S. 833 (1990); [United States v. Trzaska](#), 859 F.2d 1118, 1120 (2d Cir. 1988), cert. denied, 493 U.S. 839 (1989); [United States v. Crouthers](#), 669 F.2d 635, 643 (10th Cir. 1982); [United States v. Long](#), 524 F.2d 660, 661 (9th Cir. 1975); see also [United States v. Shelton](#), 337 F.3d 529 (5th Cir. 2003)(Involving an estranged wife who left because of her husband’s infidelity).

- b. **Parent – Child Situations.** Consent in parent-child situations can be divided into those where the child was a minor, and those where the child was above the age of 18.

- 1) **Parents Can Ordinarily Consent to a Search of a Minor Child’s Property.** As a general rule, “when the perpetrator is a minor, parental consent to search the perpetrator’s property and living space will almost always be valid.” *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, DOJ, at 20 (March 2001). See, e.g., [Rith](#), 164 F.3d at 1330; [United States v. Whitfield](#), 939 F.2d 1071, 1075 (D.C. Cir. 1991)(“When a minor child’s room is involved, agents might reasonably assume that the child’s mother, in the performance of her parental duties,

would not only be able to enter her child's bedroom but also would regularly do so"); [United States v. Di Prima](#), 472 F.2d 550, 551 (1st Cir. 1973) ("Even if a minor child, living in the bosom of a family, may think of a room as 'his,' the overall dominance will be in his parents"); [Robinson](#), 999 F. Supp. at 157 ("Precedents have firmly established that a parent may consent to the search of a minor's bedroom").

2) **Whether a Parent Can Consent to a Search of an Adult Child's Property Depends on Various Factors.**

Where an adult child still lives in the home of his or her parents, the issue of parental consent becomes more complicated. In determining whether a parent can consent to a search of an adult child's living areas, courts have focused on two distinct questions.

a) **Does the Adult Child Pay Rent?** "Evidence that the defendant paid rent to the third party would tend to show a landlord-tenant relationship." [Rith](#), 164 F.3d at 1331. *See also Robinson*, 999 F. Supp. at 159 (Where officers failed to make "any inquiry as to whether [child] paid rent," the government could not make "any evidentiary showing of a landlord-tenant relationship"); [United States v. Durham](#), 1998 U.S. Dist. LEXIS 15482 (D. Kan. 1998) (Mother's consent to search son's room in attached garage invalid where, *inter alia*, "defendant had an arrangement with his mother to pay rent").

b) **Has the Child Taken Any Steps to Deny the Parents Access or Use of the Room?** "While ... parent-child relationships give rise to a presumption of control for most purposes over the property, that presumption may be rebutted by facts showing an agreement or understanding between the defendant and the third party that the latter must have permission to enter the defendant's room." [Rith](#), 164 F.3d at 1330-1331. Examples of this "include a lock on the bedroom door or an agreement, explicit or implicit, that the third party never enter a particular area." *Id.* at 1331. *See also Robinson*, 999 F. Supp. at 159 ("Generally, a mother has access to the bedroom of an adult

son who still lives at home for usual household activities”); [Durham](#), 1998 U.S. Dist. LEXIS 15482 (“The fact that the defendant’s mother’s keys did not work on either the interior or exterior doors to the locked bedroom was, or should have been, a clear signal to the officers that the defendant was asserting a separate privacy interest in the bedroom”).

- 3) **A Minor Child May Consent to a Search of a Parent’s Home.** Various circuits have addressed the issue of whether a minor child may consent to a search of a parent’s home or property. Assuming that the child has authority over the area to be searched, these circuits hold that “minority does not, *per se*, bar a finding of actual authority to grant third-party consent to entry.” [United States v. Gutierrez-Hermosillo](#), 142 F.3d 1225, 1231 (10th Cir.), *cert. denied*, 525 U.S. 900 (1998)(Finding consent given by 14-year old to be valid). Instead, a child’s “minority is a factor in determining the voluntariness of her consent.” *Id.* See, e.g., [United States v. Clutter](#), 914 F.2d 775, 778 (6th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991)(Consent given by twelve and fourteen year old boys found valid); [Lenz v. Winburn](#), 51 F.3d 1540, 1548-1549 (11th Cir. 1995)(Consent given by 9-year old found valid).

- c. **Roommate Situations.** As a general rule, “when an apartment, for example, is shared, one ordinarily assumes the risk that a co-tenant might consent to a search, at least to all common areas and those areas to which the other has access.” [United States v. Ladell](#), 127 F.3d 622, 624 (7th Cir. 1997). See also [Janis](#), 387 F.3d at 686 (“An adult co-occupant of a residence may consent to a search”)(citation omitted); [Duran](#), 957 F.2d at 505 (“Two friends inhabiting a two-bedroom apartment might reasonably expect to maintain exclusive access to their respective bedrooms, without explicitly making this expectation clear to one another”). “Unless the complaining co-tenant has somehow limited the other’s access to a piece of property, the consenting co-tenant’s authority extends to all items on the premises.” [United States v. Richard](#), 994 F.2d 244, 250 (5th Cir. 1993). However, see [Georgia v. Randolph](#), 547 U.S. 103, 126 S. Ct. 1515 (2006) (A person with authority over the place to be searched can not give valid consent over the objection of a present objector who also has authority over the place to be searched.)

- d. **Landlord – Tenant Situations.** “In general, a landlord does not have common authority over an apartment or other dwelling unit leased to a tenant.” United States v. Elliott, 50 F.3d 180, 185 (2d Cir. 1995), cert. denied, 516 U.S. 1050 (1996)[citing Chapman v. United States, 365 U.S. 610, 616-18 (1961)]. However, a “landlord does ... have authority to consent to a search by police of dwelling units in his building that are not leased.” Id. “Further, if the landlord has joint access or control over certain areas of his apartment building for most purposes, he may validly consent to a search of those areas.” Id.

4. **Third Party Consent Rules Do Not Apply When Another Present Party With Authority Objects.** In 2006, the Supreme Court ruled that the consent of one party with authority over the place to be searched is not valid if another party with authority is present, and refuses to give his consent for the search. Law enforcement officers are not required to try to locate any or all of those who might give or refuse consent to search; however, the officers may not isolate or remove the potentially non-consenting party in order to avoid a possible objection to the search. Georgia v. Randolph, 547 U.S. 103, 121-22 (2006).

- a. **The Person Objecting May Not Have to be Present.** Although Georgia v. Randolph addressed only physically present objectors, the Ninth Circuit has extended Randolph to hold that the objection of a *non*-present party with authority over the area to be searched will defeat consent of a present party. United States v. Murphy, 2008 U.S. App. LEXIS 3505 (9th Cir. 2008) (holding that even when the objector is not present at the scene, “once a co-tenant has registered his objection, his refusal to grant consent remains effective barring some objective manifestation that he has changed his position and no longer objects”). The Eighth Circuit disagrees, holding that the objecting party must be physically present at the scene to defeat consent. US v. Hudspeth, 2008 U.S. App. Lexis 5157 at *18 (8th Cir. 2008) (en banc) (relying on the Randolph Court’s admission that “‘we are drawing a fine line; if a potential defendant with self-interest in objecting is in fact *at the door and objects*, the co-tenant’s permission does not suffice for a reasonable search.’ Hudspeth was not at the door and objecting and does not fall within Randolph’s ‘fine line.’”) (emphasis in original; internal citations omitted).
- b. **Removal of a Potential Objector for a Proper Purpose Is Lawful.** In United States v. Dimodica, 468 F.3d 495 (7th Cir. 2006), defendant’s wife reported that she had been abused

by her husband. The wife also told agents that defendant used drugs and likely had drugs and drug paraphernalia in their home, that defendant owned several firearms and likely had firearms in their home, and that defendant was a convicted felon. Police determined that there was probable cause to arrest defendant for abuse and obtained the wife's permission to search the home. The police found weapons. Defendant contended that the search violated his Fourth Amendment rights because he did not consent to the search. The court found that the officers legally arrested the defendant based on probable cause that he had committed domestic abuse. Once defendant was arrested and removed from the scene, the wife's consent alone was valid and permitted the officers to legally search the residence.

- c. **There is No Requirement to Seek Out Co-Tenants or to Bring Them to the Scene to Object.** In United States v. Wilburn, 473 F.3d 742 (7th Cir. 2007), a defendant who was suspected of firearms offenses was arrested for an unrelated traffic violation near his home. The defendant was not informed of the firearms investigation. Officers went to the defendant's home, which he shared with his girlfriend, and obtained consent from the girlfriend to search the home. The defendant, who was outside in the back of the patrol car, was not asked for consent (nor did he offer an objection on his own). When the defendant later challenged the admissibility of the evidence found inside the home, the court held that because the defendant was lawfully arrested and treated like any other arrestee, he was not kept from the premises for the sole purpose of avoiding his objection to the search. The girlfriend's consent was valid; the police were not obligated to bring the defendant to the home so he could be a party to the discussion regarding consent.

5. **The Doctrine of "Consent Once Removed."**

The doctrine of "consent once removed" is used primarily in narcotics cases. However, its application is not limited to those types of situations. Accordingly, the instructor may wish to present an overview of the concept. This material is not included in the Student Handbook and is not tested.

- a. **"Consent Once Removed" - Generally.** Generally, the police are required to knock on the door, announce their presence and await admittance for a reasonable time before forcibly entering a residence. See Wilson v. Arkansas, 514

U.S. 927, 929 (1995). However, it is well established that an undercover officer may gain entrance by misrepresenting his identity and may gather evidence while there. See [Lewis v. United States](#), 385 U.S. 206, 211 (1966) (“A government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises for the very purposes contemplated by the occupant”); [United States v. Bramble](#), 103 F.3d 1475, at *6 (9th Cir. 1996) (“If undercover agents, when asked if they were police officers, were required to answer truthfully, their lives would be placed in danger. If a lie in response to such a question made all evidence gathered thereafter the inadmissible fruit of an unlawful entry, all dealers in contraband could insulate themselves from investigation merely by asking every person they contacted in their business to deny that he or she was a law enforcement agent”).

- b. **“Consent Once Removed” - The Rule.** “The concept of consent once removed is, ultimately, a variation of the ‘traditional’ consent doctrine.” [United States v. Jachimko](#), 19 F.3d 296, 299 (7th Cir. 1994). Stated succinctly, the rule provides as follows: “When one invites an undercover agent into his house, the agent can summon other agents to assist in the arrest, and the other agents are not guilty of a violation of the Fourth Amendment.” [United States v. Paul](#), 808 F.2d 645, 648 (7th Cir. 1986). See also [United States v. Brothers](#), 30 M.J. 289, 292 (C.M.A. 1990) (Noting, “there is authority that, after a consensual entry of the premises has been made by an undercover agent (be he a law-enforcement officer or merely an informant) for the purpose of buying drugs, the agent may reenter with law-enforcement assistance”). In essence, the initial consent is “transferred” to other officers so that they may enter and effect the search and/or arrest. See also [United States v. Akinsanya](#), 53 F.3d 852, 856 (7th Cir. 1995). The rationale for the rule is simply this: “Once consent has been obtained from one with authority to give it, any expectation of privacy has been lost. We seriously doubt that the entry of additional officers would further diminish the consenter’s expectation of privacy, and, in the instant case, any remaining expectation of privacy was outweighed by the legitimate concern for the safety of [the officers inside].” [United States v. Rubio](#), 727 F.2d 786, 797 (9th Cir. 1983).
- c. **“Consent Once Removed” - The Requirements.** Generally speaking, there are three requirements for a valid situation involving “consent once removed.”

1) **Initial Entry With Permission of Authorized**

Individual. First, the initial entry into the premise must have been with the permission of someone authorized to consent.

- 2) **Probable Cause to Arrest or Search is Developed.** Second, probable cause to effect a search or arrest must be established.
- 3) **Assistance From Other Officers is Immediately Summoned.** Third, the government agent or informant must immediately summon help from other officers.

See, e.g., [Bramble](#), 103 F.3d at 1478; [Akinsanya](#), 53 F.3d at 856 (“The doctrine of ‘consent once removed’ is applicable where the undercover agent or government informant: (1) entered at the express invitation of someone with authority to consent; (2) at that point established the existence of probable cause to effectuate an arrest or search; and (3) immediately summoned help from other officers”); [United States v. Pollard](#), 251 F.3d 643, 648 (6th Cir.), cert. denied, 531 U.S. 999 (2000)(Same); [United States v. Samet](#), 794 F. Supp. 178, 181 (E.D. Va. 1992)(Same).

- d. **The Circuits are Split on Whether “Consent Once Removed” Applies to Both Undercover Agents and Confidential Informants.** Whether the initial consent was granted to an undercover agent or a confidential informant is of no constitutional significance in the Sixth and Seventh Circuits. Where an undercover officer may invite other officers inside the home, the same principle “extends to the case where the initial, consensual entry is by a confidential informant.” [Paul](#), 808 F.2d at 648. See also [Jachimko](#), 19 F.3d at 299; [United States v. Yoon](#), 398 F.3d 802, 807 (6th Cir. 2005). The Tenth Circuit, however, has rejected this expansion of “consent once removed,” holding that the doctrine does not apply to those other than law enforcement officers. [Callahan v. Millard County](#), 494 F.3d 891, 897 (10th Cir. 2007).

NOTE: On March 24, 2008, the Supreme Court granted certiorari to determine whether “consent once removed” applies to those other than law enforcement officers. [Pearson v. Callahan](#), 2008 U.S. LEXIS 2865 (2008).

- e. **In Utilizing “Consent Once Removed,” Officers May Not**

Exceed the Scope of the Original Consent Given. “When entering pursuant to the suspect’s ‘consent once removed,’ ... the additional backup officers are restricted to the scope of the consent originally given.” [Bramble](#), 103 F.3d at *8 (internal citations omitted). See also [Pollard](#), 215 F.3d at 649 (Noting “the back-up officers were acting within constitutional limits when they entered to assist him since no further invasion of privacy was involved once the undercover officer made the initial entry”).

- f. **Under the “Consent Once Removed” Doctrine, the Re-Entry to Effect the Arrest or Search Must Be “Immediate.”** Suffice it to say, “one consensual entry [doesn not] mean that law enforcement agents may thereafter enter and exit a home at will.” [United States v. Diaz](#), 814 F.2d 454, 459 (7th Cir.), cert. denied, 484 U.S. 857 (1987). Instead, the re-entry must be “immediate,” although what exactly is meant by that term is subject to interpretation. Compare [United States v. Santiago](#), 1993 U.S. Dist. LEXIS 3242 at *11 (N.D. Ill. 1993)(Upholding re-entry 15 minutes after exit where officers’ “actions after the CI established probable cause essentially constituted an unbroken chain of events, and the arrests were executed without interruption or significant loss of time”), with [United States v. Robeles-Ortega](#), 348 F.3d 679 (7th Cir. 2003) (Finding re-entry after 2 minutes impermissible where the undercover agent did not remain in the apartment; the CI did not momentarily step outside, then knock on the door; and the officers did not “enter the apartment at the same time that the CI exited).

X. **EPO #24: IDENTIFY THE REQUIREMENTS ALLOWING AN INVENTORY OF LAWFULLY IMPOUNDED PERSONAL PROPERTY**

1. **General Rule – Inventory Searches are an Exception to the Warrant Requirement.** Inventory searches are a “well-defined exception to the warrant requirement of the Fourth Amendment.” [Colorado v. Bertine](#), 479 U.S. 367, 371 (1987). See also [United States v. Rowland](#), 341 F.3d 774, 779 (8th Cir. 2003)(“Law enforcement may search a lawfully impounded vehicle to compile an inventory list of the vehicle’s contents without violating the Fourth Amendment”). In sum, once an item (e.g., a vehicle) has been lawfully impounded, an inventory search may be conducted if it is done “reasonably.” [South Dakota v. Opperman](#), 428 U.S. 364, 372 (1976). An inventory will be “reasonable” if it is undertaken pursuant to standardized police procedures. [Id.](#) at 376.
- a. **Evidence Found During a Valid Inventory Search is Admissible.** Where evidence is found during a lawfully

conducted inventory search, it may be used against the defendant in a later trial. Because inventory searches are routine, non-criminal procedures whose justification does not hinge on the existence of probable cause, "the absence of a warrant is immaterial to the reasonableness of the search." [Illinois v. Lafayette](#), 462 U.S. 640, 643 (1983). See also [Rowland](#), 341 F.3d at 779 (In conducting an inventory, "officers need neither search warrant nor probable cause, for they are not investigating a crime; instead, they are 'performing an administrative or care-taking function'" (citation omitted)).

- b. **Inventory Searches Are Not Permitted For the Sole Purpose of Discovering Incriminating Evidence.** To be reasonable under the Fourth Amendment, "an inventory must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory." [Florida v. Wells](#), 495 U.S. 1, 4 (1990). Thus, where law enforcement officers act "in bad faith or for the sole purpose of investigation," [Bertine](#), 479 U.S. 373, an inventory search will be held invalid. Of course, a valid inventory search is not prohibited simply because a law enforcement officer also has an investigatory interest. "It is well established that the police are not precluded from conducting inventory searches when they lawfully impound the vehicle of an individual that they also happen to suspect is involved in illegal activity." [United States v. Wallace](#), 102 F.3d 346, 348 (8th Cir. 1996)(citation omitted). See also [United States v. Petty](#), 367 F.3d 1009, 1013 (8th Cir. 2004)("That an officer suspects he might uncover evidence in a vehicle ... does not preclude the police from towing a vehicle and inventorying the contents, as long as the impoundment is otherwise valid"); [United States v. Rodriguez-Morales](#), 929 F.2d 780, 787 (1st Cir. 1991), cert. denied, 502 U.S. 1030 (1992)("As long as impoundment pursuant to the community caretaking function is not a mere subterfuge for investigation, the coexistence of investigatory and caretaking motives will not invalidate the seizure"); [United States v. Edwards](#), 242 F.3d 928, 938 (10th Cir. 2001)("To be justified as an inventory search, however, the search cannot be investigatory in nature but must instead be used only as a tool to record the defendant's belongings to protect the police from potential liability").
- c. **Evidence Found During a Valid Inventory May Provide Justification For a More Thorough Search.** Where evidence is found during a lawful inventory search, that evidence may provide probable cause for a more thorough

search under the vehicle exception to the warrant requirement. See, e.g., [Michigan v. Thomas](#), 458 U.S. 259, 261-62 (1982)(per curiam)(discovery of marihuana during an inventory search could function as probable cause to support a second, more comprehensive search of the vehicle for additional contraband).

2. **There are Three Justifications for Conducting Inventory Searches.** In [Opperman](#), the Supreme Court outlined three justifications for allowing law enforcement officers to inventory lawfully impounded property without first obtaining a warrant.
 - a. **Inventory Searches Are Allowed to Protect the Owner's Property.** First, there is a need for law enforcement to protect the owner's property while it remains in police custody.
 - b. **Inventory Searches Are Allowed to Protect Law Enforcement Officer Against Claims or Disputes.** Second, an inventory protects the police against claims or disputes over lost or stolen property.
 - c. **Inventory Searches Are Allowed to Protect Law Enforcement Officers From Potential Dangers.** And third, an inventory is necessary for the protection of the police from potential dangers that may be located in the property.

[Id.](#) at 369. See also [United States v. Moraga](#), 76 Fed. Appx. 223, 228 (10th Cir. 2003) (unpublished) ("Once officers have made a lawful decision to impound a vehicle, they may conduct an inventory search of the vehicle for three reasons: (1) to protect the owner's property while in police custody, (2) to prevent claims of lost, stolen, or vandalized property, and (3) to guard the police from danger"); [United States v. Green](#), 293 F.3d 855, 857 (5th Cir.), cert. denied, 537 U.S. 966 (2002)("Warrantless inventory searches of seized automobiles do not violate the Fourth Amendment if they are conducted "pursuant to standardized regulations and procedures that are consistent with (1) protecting the property of the vehicle's owner, (2) protecting the police against claims or disputes over lost or stolen property, and (3) protecting the police from danger").

3. **There are Generally Two (2) Requirements for a Valid Inventory Search.** In order to conduct an inventory search, two (2) requirements must be met. See, e.g., [United States v. Williams](#), 936 F.2d 1243, 1248 (11th Cir. 1991), cert. denied, 503 U.S. 912 (1992)("If a search is to be upheld under the inventory search doctrine, therefore, the police must first have the authority to impound the vehicle and must then follow the procedures outlined in the policy").

- a. **The Property Must Be Lawfully Impounded.** First, the

property that is being inventoried must have lawfully come into the possession of law enforcement officers. Generally, “an impoundment must either be supported by probable cause, or be consistent with the police role as ‘caretaker’ of the streets and completely unrelated to an ongoing criminal investigation.” [United States v. Duguay](#), 93 F.3d 346, 352 (7th Cir. 1996), *cert. denied*, 526 U.S. 1029 (1999). *See, e.g., Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)(Noting that vehicles are commonly taken into police custody based upon “community caretaking functions,” such as towing vehicles for violating parking ordinances and removing vehicles from accident scenes); [Petty](#), 367 F.3d at 1012 (“Police may take protective custody of a vehicle when they have arrested its occupants, even if it is lawfully parked and poses no public safety hazard”)(citation omitted); [United States v. Brown](#), 787 F.2d 929, 931-32 (4th Cir.), *cert. denied*, 479 U.S. 837 (1986)(“For an inventory search to be valid, the vehicle searched should first be in the valid custody of the law enforcement officers conducting the inventory”). The lawful impoundment of a vehicle, for example, is generally based upon one of two distinct sources of authority.

- 1) **Violations of Motor Vehicle Laws.** One source of authority for the impoundment of a stopped, parked, or abandoned vehicle would be a violation of local and state motor vehicle laws. *See, e.g., Opperman*, 428 U.S. at 375 (“The inventory was conducted only after the car had been impounded for multiple parking violations”); [United States v. Rios](#), 88 F.3d 867, 870 (10th Cir. 1996)(Upholding defendant's motion to suppress because “the government failed to show that the impoundment of the vehicle satisfied [state] law ...”).
- 2) **“Community Caretaking” Function.** “Impoundment of a vehicle for the safety of the property and the public is a valid ‘community caretaking’ function of the police.” [Petty](#), 367 F.3d at 1011-12 (citation omitted). *See also United States v. Proctor*, 489 F.3d 1348 (D.C. Cir. 2007) (“The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.”); [Rios](#), 88 F.3d at 870 (Upholding defendant's motion to suppress because “the government failed to show that the impoundment of the vehicle satisfied ... the public safety exception of [South Dakota v. Opperman](#)”). As noted by one court: “The policeman

plays a rather special role in our society; in addition to being an enforcer of the criminal law, he is a 'jack-of-all-emergencies,' ... expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety. Recognition of this multifaceted role led to the Court's coinage of the 'community caretaking' label in [Cady v. Dombrowski](#)." [Rodriguez-Morales](#), 929 F.2d at 784-85. Further:

"Dealing with vehicle-related problems ranks among such responsibilities. Because of the ubiquity of the automobile in modern American civilization, and the automobile's nature -- mechanically delicate, highly mobile, safely operable only by trained and licensed individuals -- the police are constantly faced with dynamic situations, no two quite identical, in which they, in the exercise of their community caretaking function, must interact with car and driver to promote public safety. Not surprisingly, our fourth amendment jurisprudence has incorporated this reality." [Id.](#) at 785.

See also [United States v. Kornegay](#), 885 F.2d 713, 716 (10th Cir. 1989), cert. denied, 495 U.S. 935 (1990)(Finding a vehicle legally impounded where it was legally parked in a public parking lot but defendant was alone, was unlikely to be returning soon because of his arrest, and the car would have been left open to dangers of vandalism or theft).

- b. **There Must Also Be a Standardized Policy That Governs the Conduct of the Inventory.** The second requirement of a valid inventory search is that the inventory be conducted in accordance with a standardized inventory policy aimed at accomplishing the justifications for inventory searches. See [Florida v. Wells](#), 495 U.S. at 4 ("Standardized criteria or established routine must regulate" inventory searches). As noted by the Supreme Court: "The underlying rationale for allowing an inventory exception to the Fourth Amendment warrant rule is that police officers are not vested with discretion to determine the scope of the inventory search. . . . This absence of discretion ensures that inventory searches will not be used as a purposeful and general means of discovering evidence of crime." [Bertine](#), 479 U.S. at 376 (Blackmun, J., concurring)(citation omitted). See also [Petty](#), 367 F.3d at

1012 ("Some degree of 'standardized criteria' or 'established routine' must regulate these police actions ..."); [United States v. Hurst](#), 228 F.3d 751, 758 (6th Cir. 2000)("It is well-established that law enforcement officers may make a warrantless search of a legitimately seized vehicle provided the inventory is conducted according to standardized criteria or established routine"); [United States v. Bullock](#), 71 F.3d 171, 177 (5th Cir. 1995), cert. denied, 517 U.S. 1126 (1996)("In order to prevent inventory searches from concealing such unguided rummaging, Supreme Court has dictated that a single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront")(quotation and citation omitted).

- 1) **Written Inventories Are Not Required.** While the law enforcement agency involved must have a "standardized" inventory policy, several courts have upheld unwritten standardized policies. See, e.g., [United States v. Griffiths](#), 47 F.3d 74, 78 (2d Cir. 1995); [United States v. Frank](#), 864 F.2d 992, 1002 (3rd Cir. 1988); [United States v. Ford](#), 986 F.2d 57, 60 (4th Cir. 1993); [Bullock](#), 71 F.3d at 177. Nonetheless, as a practical matter, the best way for a law enforcement agency to avoid difficulty with this particular requirement would be to reduce their standardized inventory policy to writing.
- 2) **Law Enforcement Agencies May Establish Their Own Policies.** Law enforcement agencies may establish their own standardized policies, so long as they are reasonably constructed to accomplish the goals of inventory searches and are conducted in good faith.
- 3) **Proving the Existence of a Standardized Inventory Procedure.** "The existence of ... a valid procedure may be proven by reference to either written rules and regulations or testimony regarding standard practices." [United States v. Mendez](#), 315 F.3d 132, 137 (2d Cir. 2002). See also [Petty](#), 367 F.3d at 1012 ("It would have been simpler for the government to present the police department's written impoundment policy, but testimony can be sufficient to establish police procedures ...").

4. **The Standardized Policy of the Agency Determines the Scope of an Inventory Search.** The scope of an inventory search is

defined by the standardized inventory policy of the particular agency involved. As a general rule, however, inventory searches may not extend any further than is reasonably necessary to discover valuables or other items for safekeeping. For example, when conducting an inventory search of a vehicle, law enforcement officers are not justified in looking into the heater ducts or inside the door panels of a vehicle, in that valuables are not normally kept in such locations.

- a. **Passenger Compartment.** The Supreme Court has upheld inventory searches of the passenger compartments of vehicles. [Opperman](#), 428 U.S. at 376; [Bertine](#), 479 U.S. at 376. See also [United States v. Patterson](#), 140 F.3d 767, 773 (8th Cir), cert. denied, 525 U.S. 907 (1998). This would normally include searches of glove compartments. [Opperman](#), 428 U.S. at 372 (Noting “standard inventories often include an examination of the glove compartment, since it is a customary place for documents of ownership and registration ... as well as a place for the temporary storage of valuables”)(internal citation omitted).
- b. **Trunks.** Additionally, inventory searches of the trunk have also been found valid. [Dombrowski](#), 413 U.S. at 448; [United States v. Judge](#), 864 F.2d 1144, 1146 (5th Cir. 1989); [Goodson v. City of Atlanta](#), 763 F.2d 1381, 1386 (11th Cir. 1985). However, it should be remembered that “[e]xcessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search not subject to suppression.” [United States v. Ramirez](#), 523 U.S. 65, 71 (1998). Thus, where a trunk is locked, courts may require officers “ordinarily to use master keys or similar tools to gain entry” and comply with the Fourth Amendment. [United States v. Tueller](#), 349 F.3d 1239, 1245 (10th Cir. 2003).
- c. **Containers.** Inventory searches of containers, locked or unlocked, may be conducted, so long as the standardized inventory policy permits. [Opperman](#), 428 U.S. at 371 (“When the police take custody of any sort of container [such as] an automobile ... it is reasonable to search the container to itemize the property to be held by the police”); [Bertine](#), 479 U.S. at 376; [Lafayette](#), 462 U.S. at 648; [Wells](#), 495 U.S. at 4.
- d. **Engine Compartment.** “A valid inventory search conducted by law enforcement officers according to standard procedure may include the engine compartment of a vehicle.” [United States v. Lumpkin](#), 159 F.3d 983, 988 (6th Cir. 1998). See also [United States v. Lewis](#), 3 F.3d 252, 254 (8th Cir. 1993), cert. denied, 511 U.S. 1111 (1994).

5. **There is No Particular Location Where an Inventory Must Be Conducted.** “Although inventory searches typically occur at a police station or an impoundment facility, rather than at the time of the arrest ... the Fourth Amendment does not require that police conduct inventory searches at any particular location.” [Mendez](#), 315 F.3d at 137 n.3 [citing [Lafayette](#), 462 U.S. at 641 (Police station); [Opperman](#), 428 U.S. at 366 (Impoundment facility); [Wells](#), 495 U.S. at 2 (Impoundment facility); [United States v. Thompson](#), 29 F.3d 62, 64 (2d Cir. 1994)(Impoundment facility); [Bertine](#), 479 U.S. at 368-69 (Uholding inventory search performed when the suspect was taken into custody, before the tow truck arrived)]. See also [Williams](#), 936 F.2d at 1248-49 (On-site inventory of vehicle upheld); [United States v. Chambers](#), 59 Fed. Appx. 509, 510 (4th Cir.) (unpublished), cert. denied, 538 U.S. 1051 (2003)(“An on-site inventory search, as opposed to one that is conducted at an impound lot, is permissible so long as the officer had the initial authority to impound the vehicle”).

Y. EPO #25: IDENTIFY THE CIRCUMSTANCES WHEN AN INSPECTION IS PERMITTED FOR REAL AND PERSONAL PROPERTY

1. **General Rule – Administrative Inspections (Searches) are an Exception to the Warrant Requirement.** The Supreme Court has “allowed searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited.” [City of Indianapolis v. Edmond](#), 531 U.S. 32, 37 (2000). Generally termed “inspections,” these types of administrative searches take place in a variety of different forums, and are directed against both personal and real property. Some of the more common “inspections” are discussed below.
2. **The Purpose of an Administrative Search is Not to Investigative Criminal Activity.** Administrative searches may not be used to investigative criminal activity. “If the primary object of the search is to gather evidence of criminal activity, a criminal search warrant may be obtained only on a showing of probable cause to believe that relevant evidence will be found in the place to be searched.” [Michigan v. Clifford](#), 464 U.S. 287, 294 (1984). Of course, “if evidence of criminal activity is discovered during the course of a valid administrative search, it may be seized under the ‘plain view’ doctrine ... [and] may be used to establish probable cause to obtain a criminal search warrant.” *Id.* See also [New York v. Burger](#), 482 U.S. 691, 716 (1987)(“The discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal or the administrative scheme suspect”); [United States v. Bulacan](#), 156 F.3d 963, 973 (9th Cir. 1998)(“When an administrative search scheme encompasses both a permissible and an impermissible purpose,

and when the officer conducting the search has broad discretion in carrying out the search, that search does not meet the Fourth Amendment's reasonableness requirements"). Sanchez v. County of San Diego, 464 F.3d 916 (9th Cir. 2006) (Consent-based home inspections to prevent welfare fraud, where the only ramification of refusal to consent is ineligibility for welfare benefits is not an unreasonable as the inspections are not conducted to detect criminal activity.)

3. **Sobriety Checkpoints Are Permissible.** The use of highway sobriety checkpoints does not violate the Fourth Amendment. See Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 447 (1990). In reaching this conclusion, the Court balanced "the State's interest in preventing accidents caused by drunk drivers, the effectiveness of sobriety checkpoints in achieving that goal, and the level of intrusion on an individual's privacy caused by the checkpoints." Id. at 449. And, "in sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of [sobriety checkpoints]." Id. at 455.
4. **Driver's License and Registration Checkpoints Are Permissible.** In Delaware v. Prouse, 440 U.S. 648, 663 (1979), the Supreme Court "suggested that a similar type of roadblock [as that in Sitz] with the purpose of verifying drivers' licenses and vehicle registrations would be permissible." Edmond, 531 U.S. at 38.
5. **Information - Gathering Checkpoints Are Permissible.** "[S]pecial law enforcement concerns will sometimes justify highway stops without individualized suspicion." Illinois v. Lidster, 540 U.S. 419, 124 S. Ct. 885, 889 (2004). Such is the case in a situation where the checkpoint is set up to gather information regarding a previous crime, as it was in Lidster. Thus, where "[t]he stop's primary law enforcement purpose [is] **not** to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others," id., no individualized suspicion is necessary. In fact, "the concept of individualized suspicion has little role to play" in this type of situation, id., in that "an information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual." Id. Finally, "information-seeking highway stops are less likely to provoke anxiety or to prove intrusive... The stops are likely brief. The police are not likely to ask questions designed to elicit self-incriminating information. And citizens will often react positively when police simply ask for their help as 'responsible

citizens' to "give whatever information they may have to aid in law enforcement." [Id.](#) (citation omitted).

6. **Checkpoints For General Crime Control Purposes Are Impermissible.** The Supreme Court has "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." [Edmond](#), 531 U.S. at 41. Instead, the Court has "recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion." [Id.](#) Additionally, "each of the checkpoint programs [the Court has] approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety." [Id.](#) The Court has been "particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends." [Id.](#) at 43. Thus, in [Edmond](#), where the "primary purpose of the ... narcotics checkpoints [was] ... to advance 'the general interest in crime control,'" [id.](#) at 44, the Court "decline[d] to suspend the usual requirement of individualized suspicion where the police [sought] to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." [Id.](#)
7. **Administrative Inspections of Businesses.** "The inspection of business premises and operations is commonplace in our society. Virtually all businesses, without regard to their character, are subject to inspection of their premises to ensure compliance with fire, health, and safety regulations." 4 W. LaFare, *Search and Seizure* § 10.2, p. 401 (3d ed. 1996).
 - a. **Administrative Searches Generally Require Warrants.** The Supreme Court has repeatedly held "that administrative searches generally require warrants." [Clifford](#), 464 U.S. at 291. See [Marshall v. Barlow's, Inc.](#), 436 U.S. 307, 324 (1978); [Michigan v. Tyler](#), 436 U.S. 499, 504-508 (1978); [Camara v. Municipal Court](#), 387 U.S. 523, 534 (1967); [See v. City of Seattle](#), 387 U.S. 541, 543-544 (1967).
 - 1) **Warrants in Administrative Search Cases Do Not Require Traditional Probable Cause.** When a law enforcement officer obtains an administrative search warrant, "probable cause in the criminal law sense is not required." [Marshall](#), 436 U.S. at 320. "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant." [Camara](#), 387 U.S. at 539. Thus, "for purposes of an administrative search ... probable cause justifying the issuance of a warrant may be based not only on specific evidence of an

existing violation but also on a showing that 'reasonable legislative or administrative standards for conducting an ... inspection are satisfied with respect to a particular establishment.'" [Marshall](#), 436 U.S. at 320 (internal footnote and brackets omitted)(citation omitted).

- 2) **There Must Be a Regulatory Scheme for the Administrative Search.** "A search not authorized by [a] regulatory scheme is unreasonable unless it independently satisfies traditional Fourth Amendment requirements." [United States v. Payne](#), 181 F.3d 781, 787 (6th Cir. 1999). See [Clifford](#), 464 U.S. at 294 n.5 ("Probable cause to issue an administrative warrant exists if reasonable legislative, administrative, or judicially prescribed standards for conducting an inspection are satisfied ...").

- 3) **Consent Should Normally Be Sought Before Obtaining a Warrant for an Administrative Search.** "As a practical matter and in light of the Fourth Amendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused" [Camara](#), 387 U.S. at 539. This is because "most citizens allow inspections of their property without a warrant." [Id.](#)

- b. **Closely Regulated Businesses.** The firearms and alcohol industries are among the most closely regulated in this country. "Because the owner or operator of commercial premises in a 'closely regulated' industry has a reduced expectation of privacy, the warrant and probable cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search, have lessened application in this context." [Burger](#), 482 U.S. at 702 (internal citation omitted). See also [United States v. Mendoza-Gonzalez](#), 363 F.3d 788, 794 (8th Cir. 2004) ("Commercial trucking is a closely regulated industry within the meaning of [Burger](#)")(citation omitted). Accord [United States v. Vasquez-Castillo](#), 258 F.3d 1207, 1210 (10th Cir. 2001); [United States v. Fort](#), 248 F.3d 475, 480-82 (5th Cir.), cert. denied, 534 U.S. 977 (2001); [United States v. Dominguez-Prieto](#), 923 F.2d 464, 468-70 (6th Cir.), cert. denied, 500 U.S. 936 (1991).

- 1) **Rationale for the "Closely Regulated Business" Exception.** There are two justifications for allowing warrantless administrative searches of closely regulated businesses.

- a) **Inspection Purpose Could Be Easily Frustrated.** “If inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible.” [United States v. Biswell](#), 406 U.S. 311, 316 (1972). See also [Crosby v. Paulk](#), 187 F.3d 1339, 1347 (11th Cir. 1999)(“Unannounced or surprise inspections are crucial if the regulatory scheme ... is to function at all”)(citation omitted).
- b) **Pervasive Regulation Reduces the Expectation of Privacy.** The Supreme Court has “recognized a reduced expectation of privacy for regulated industries, and, thus, the Fourth Amendment standard of reasonableness for a government search has lessened application in this context.” [Fort](#), 248 F.3d at 482. See [Burger](#), 482 U.S. at 702 (Holding that “owner or operator of commercial premises in a ‘closely regulated’ industry has a reduced expectation of privacy”).
- 2) **Search of “Closely Regulated Business” Still Must Be Reasonable.** Notwithstanding the above, a warrantless search of even a closely regulated business must be “reasonable.” In this context, a “warrantless inspection ... will be deemed to be reasonable only so long as three criteria are met.” [Burger](#), 482 U.S. at 702.
 - a) **There Must Be a Substantial Government Interest.** First, there must be a “substantial” government interest in the regulatory scheme pursuant to which the inspection is made, [Id.](#);
 - b) **The Warrantless Inspection Must Be Necessary.** “Second, the warrantless inspections must be ‘necessary to further the regulatory scheme,’” [Id.](#) (internal brackets omitted);
 - c) **The Inspection Program Must Provide an Adequate Substitute for a Warrant.** Third, “the statute’s inspection program, in terms of

the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant," [Id.](#) at 703. In essence, "the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers." [Id.](#)

3) **Administrative Inspections May Not Be Used as a Pretext for Gathering Criminal Evidence.**

"Although the government may address a problem in a regulated industry through administrative and penal sanctions ... an administrative inspection may not be used as a pretext solely to gather evidence of criminal activity." [United States v. Johnson](#), 994 F.2d 740, 742 (10th Cir. 1993). See also [Whren v. United States](#), 517 U.S. 806, 811-12 (1996)(Noting that "the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administrative regulation, is not accorded to searches that are not made for those purposes"); [Anobile v. Pelligrino](#), 274 F.3d 45, 59 (2d Cir. 2001)("The Supreme Court has acknowledged, however, that a search may be invalid if the administrative inspection was a 'pretext' for obtaining evidence of general criminal activity").

8. **Security Checkpoints at Sensitive Government Facilities and Airports.** Security screening at sensitive government facilities and airports generally consists of using magnetometers and x-ray machines to examine individuals and their containers. It is clear that the use of both magnetometers and x-ray machines to scan individuals and their belongings constitutes a search implicating the Fourth Amendment. See [United States v. Epperson](#), 454 F.2d 769, 770 (4th Cir.), cert. denied, 406 U.S. 947 (1972). It is equally clear that "a search conducted without a warrant is unreasonable unless it falls within one of the classes of permissible warrantless searches." [Cady v. Dombrowski](#), 413 U.S. 433, 439 (1973). The administrative search exception to the Fourth Amendment's probable cause and warrant requirements has been relied upon to support this type of security screening.

- a. **Searches at Security Checkpoints.** Screening searches conducted at designated security checkpoints in airports and sensitive government facilities fall within one of the permissible

"classes" of warrantless searches, namely, administrative searches that are "conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as a part of a criminal investigation to secure evidence of a crime." [United States v. Davis](#), 482 F.2d 893, 908 (9th Cir. 1973); [Camara v. Municipal Court](#), 387 U.S. 523, 528-29 (1967). Thus, the constitutionality of a security screening search does not depend on either ongoing consent or irrevocable implied consent. When a screening search is otherwise reasonable and conducted pursuant to statutory authority (such as 49 § U.S.C. 44901), all that is required is a person's election to attempt entry into the secured area of the facility. See, e.g., [United States v. Aukai](#), 497 F.3d 955 (9th Cir. 2007) (airport security screening).

- b. **Searches Prior to Security Checkpoints.** Courts have been quick to note "a sharp distinction between a search conducted at an airport boarding gate and the search of certain persons in the general airport area." [United States v. Wehrli](#), 637 F.2d 408, 409 n.1 (5th Cir. Unit B, 1981)(citations omitted). For example, in [United States v. Skipwith](#), 482 F.2d 1272 (5th Cir. 1973), the court distinguished between "searches of persons in the general airport area" and those "who actually present themselves for boarding on an air carrier." *Id.* at 1276. Citing [United States v. Moreno](#), 475 F.2d 44 (5th Cir. 1973), the court noted that, "while [Moreno](#) established that searches of persons in the general airport area are to be tested under a case-by-case application of the reasonableness standard, we hold that those who actually present themselves for boarding on an air carrier, like those seeking entrance into the country, are subject to a search based on mere or unsupported suspicion." [Skipwith](#), 482 F.2d at 1276. In sum, it would appear that different standards apply to those who are searched at boarding gates as opposed to those who are simply within the general airport area when the search commences. As one commentator has noted:

"[In [Skipwith](#)], the court concluded that the standard for initiating a search at the boarding gate would be similar to that at an international border. Passengers presenting themselves for boarding therefore are subject to be searched on the basis of mere suspicion. Further, the search is limited to the point where one boards the aircraft, thereby protecting those individuals merely passing by."

John Rogers, [*Bombs, Borders, and Boarding: Combating International Terrorism at United States Airports and the Fourth Amendment*](#), 20 Suffolk Transnat'l L. Rev. 501, 530 (1997).

c. **The Point of No Return: Security Checkpoints.**

Individuals wishing to fly on an airplane or enter a sensitive government facility are required to participate in the screening process. Those not willing to undergo security screening have the option of choosing not to enter the security checkpoint. In fact, screening searches are valid only if they recognize the right of a person to avoid a search by electing not to enter the secured area. See, e.g., [United States v. Davis](#), 482 F.2d 893, 910-11 (9th Cir. 1973) (airport search). Someone who begins the security screening process, however, no longer has the right to avoid a search by electing to leave. See, e.g. [United States v. Hartwell](#), 436 F.3d 174 (3rd Cir. 2006) (one who submits to a screening search in the airport cannot terminate the search by changing his mind and electing not to fly). "As several courts have noted, a right to leave once screening procedures begin 'would constitute a one-way street for the benefit of a party planning . . . mischief,' and would 'encourage . . . terrorism by providing a secure exit where detection was threatened.'" Id. See also [Torbet v. United Airlines, Inc.](#), 298 F.3d 1087, 1090 (9th Cir. 2002) ("The Fourth Amendment does not require that passengers be given a safe exit once detection is threatened") (citation omitted); [United States v. Haynie](#), 637 F.2d 227, 231 (4th Cir. 1980) ("It appears to us that a rule under which consent to a screening search is limited by the ability to withdraw at any time could only encourage attempted hijacking by providing a secure exit should detection be threatened"); [United States v. Cyzewski](#), 484 F.2d 509, 514 n.4 (5th Cir. 1973), cert. denied, 415 U.S. 902 (1974) ("This court has made clear that an investigation need not be curtailed simply because a suspect decides not to take a particular flight. We have expressly decided to reject the right-to-leave argument").

Z. EPO #26: IDENTIFY CIRCUMSTANCES WHEN A WARRANT IS REQUIRED TO SEIZE VEHICLES SUBJECT TO THE GENERAL FORFEITURE STATUTE

NOTE: AS OF 3-18-08, THIS EPO IS NOT TAUGHT IN ANY FLETG PROGRAM. THE INFORMATION HAS NOT BEEN UPDATED SINCE THE FEBRUARY 2007 REVISION OF THIS LESSON PLAN.

1. **General Rule – Where a Vehicle is Contraband Subject to Forfeiture Under An Applicable Statute, It May Be Seized in a Public Place Without a Warrant.** As a general rule, “where there is probable cause to believe that [a] vehicle is, itself, contraband and subject to forfeiture under applicable statutes, and the vehicle is located in a public place, the vehicle may be seized without a warrant even though there is no separate probable cause to search the vehicle.” P. Joseph, *Warrantless Search Law Deskbook* § 20.2, p. 20-11 (2000). See [Florida v. White](#), 526 U.S. 559, 561 (1999) (Holding that Fourth Amendment does not require “police to obtain a warrant before seizing an automobile from a public place when they have probable cause to believe that it is forfeitable contraband”).
2. **Prohibition on Transporting Contraband.** The general prohibition on using vehicles, aircraft, or vessels to transport contraband is contained at [Title 49 U.S.C. § 80302](#). Subsection (b) of this statute provides that “a person may not:
 - a. **Transport contraband in an aircraft, vehicle, or vessel;**
 - b. **Conceal or possess contraband on an aircraft, vehicle, or vessel;** or
 - c. **Use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.”**
3. **“Contraband” – Defined.** “Contraband” is defined in subsection (a) of Title [49 U.S.C. § 80302](#), and includes in its definition the following items:
 - a. **Narcotics.** A narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([Title 21 U.S.C. § 802](#))), including marihuana (as defined in section 102 of that Act ([Title 21 U.S.C. § 802](#))), that:
 - 1) **Is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;**
 - 2) **Is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;**
 - 3) **Is acquired by theft, robbery, or burglary and transported:**
 - a) In the District of Columbia or a territory or possession of the United States; or
 - b) From a place in a State, the District of

Columbia, or a territory or possession of the United States, to a place in another State, the District of Columbia, or a territory or possession; or

- c) Does not bear tax-paid internal revenue stamps required by those laws or regulations;
 - b. **Firearms.** A firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 ([Title 26 U.S.C. § 5801 et seq.](#)).
 - c. **Forged, Altered, or Counterfeited Coins or Obligations.** A forged, altered, or counterfeit:
 - 1) **Coin or an obligation or other security of the United States Government** (as defined in section 8 of title 18 [[Title 18 U.S.C. § 8](#)]); or
 - 2) **Coin, obligation, or other security of the government of a foreign country.**
 - d. **Material or Equipment Used in Making Forged, Altered, or Counterfeited Coins or Obligations.** Material or equipment used, or intended to be used, in making a coin, obligation, or other security referred to in subsection (c), above;
 - e. **Cigarettes.** A cigarette involved in a violation of chapter 114 of title 18 [[Title 18 U.S.C. §§ 2341 et seq.](#)] or a regulation prescribed under chapter 114 [[Title 18 U.S.C. §§ 2341 et seq.](#)]; or
 - f. **Copyright Phonorecords or Computer Programs and Documentation**
 - 1) **A counterfeit label for a phonorecord, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audiovisual work** (as defined in [section 2318 of title 18](#));
 - 2) **A phonorecord or copy in violation of section 2319 of title 18;**
 - 3) **A fixation of a sound recording or music video of a live musical performance in violation of section 2319A of title 18;** or
 - 4) **Any good bearing a counterfeit mark** (as defined in [section 2320 of title 18](#)).
4. **Right to Forfeit Conveyances.** [Title 49 U.S.C. § 80303](#) provides the authority to forfeit a conveyance that has been used in violation of [Title 18 U.S.C. § 80302](#). [Section 80303](#) provides, in pertinent

part, that an authorized law enforcement officer “shall seize an aircraft, vehicle, or vessel involved in a violation of [section 80302](#) and place it in the custody of a person designated by the Secretary or appropriate Governor, as the case may be.”

5. **Exceptions to Forfeiture.** [Section 80303](#) also provides that “the seized aircraft, vehicle, or vessel shall be forfeited.” However, there are two exceptions to the general rule.

a. **Innocent-Owner Defense.** The statute mandates forfeiture of the conveyance “except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State.” “An owner’s interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use.” [Bennis v. Michigan](#), 516 U.S. 442, 446 (1996). See also [United States v. Bajakajian](#), 524 U.S. 321, 330 (1998)(“Historically, the conduct of the property owner was irrelevant; indeed, the owner of forfeited property could be entirely innocent of any crime”). Nonetheless, [section 80303](#) “contains a limited innocent-owner defense.” [United States v. One 1997 Ford Expedition Util. Vehicle](#), 135 F. Supp. 2d 1142, 1144 (D.N.M. 2001). However, “the only innocent-owner defense allowed by the statute is that an individual other than the owner stole the vehicle or otherwise obtained it illegally, and then used the vehicle to commit a violation of [Section 80302](#).” *Id.* So, for example, where the individual obtained the vehicle consensually, the innocent-owner would not be available. *Id.*

b. **Common Carriers.** When the conveyance is one used by a common carrier, forfeiture may occur only when specific circumstances occur. Specifically, “an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when

- 1) **The owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;**
- 2) **The owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs;** or
- 3) **The master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.”**

6. **Probable Cause is Required to Seize the Conveyance.** “If agents have probable cause to believe that a car is or has been used for carrying contraband, they may summarily seize it pursuant to the federal forfeiture statutes and search it.” [United States v. Capra](#), 501 F.2d 267, 280 (2d Cir. 1974), cert. denied, 420 U.S. 990 (1975). “Indeed, a vehicle may be seized even in the absence of probable cause to believe it contains contraband if there is nonetheless probable cause to believe that it was used ‘to facilitate the transfer of contraband.’” [United States v. Johnson](#), 572 F.2d 227, 234 (9th Cir.), cert. denied, 437 U.S. 907 (1978).

III. SUMMARY

A. REVIEW OF PERFORMANCE OBJECTIVES

(See Master Syllabus at beginning of lesson plan)

B. REVIEW OF TEACHING POINTS

1. Summarize teaching points
2. Plan time for asking and answering questions

IV. APPLICATION

A. LABORATORY

Students in the CITP will have a two-hour "Search Warrant Lab" as part of their continuing case investigation, as well as four hours of Probable Cause Lab. UPTP has four hours of a Legal Skills Lab to apply the principles taught in class to scenario-based training, and a two hour Computer Based Skills Lab Practical Exercise. Additional materials regarding these labs and PE are currently stored in a separate folder on the shared "L" drive.

B. PRACTICAL EXERCISE

Students in the CITP will have a two-hour practical exercise devoted to drafting a search warrant as part of their continuous case investigation (Phase 9). Additional materials regarding that practical exercise are currently stored in a separate folder on the shared "L" drive.

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TEST ITEM CONTROL SHEET (TICS)

COURSE NUMBER: 1211

COURSE TITLE: Furth Amendment

Point of contact and extension: (b)(6),(b)(7)(C)

Date: March 21, 2008

Instructions: If a course is taught in sessions, put the EXAM number (E01, E02, E03, etc...) that the EPO will be tested on in the EDT. If all EPO's are tested on one exam, place an X in each box instead of the exam number. Using the test item numbers EAD has provided, complete the table below. Every EPO tested by multiple choice exam must be represented in each set with **one** test item. If an EPO is tested by PE or not tested at all put PE or NA in that corresponding EPO row in the program box. A TICS and EDT is required for all courses tested at all FLETC locations. Use more than one form if necessary.

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

U.S. DEPARTMENT OF HOMELAND SECURITY
FEDERAL LAW ENFORCEMENT TRAINING CENTER
OFFICE OF MISSION SUPPORT
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Homeland Security

LESSON PLAN

FOURTH AMENDMENT

1211

FEB/11

WARNING

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Revised by:

(b)(6), (b)(7)(C)

Senior Instructors

Legal Division

SEP 2008

Revised by (b)(6), (b)(7)(C)

FEB 2010

Revised by (b)(6), (b)(7)(C)

2010 revisions highlighted in yellow.

Summary of 2010 Revisions: Changes are preceded by ***. Use Word's Find command for *** to locate changes quickly.

1. Split EPO Table in two to make room for additional programs.
2. Added programs: ICE-DOTTP, ICE-FOTP and IPOTP.
3. Added MEPO 27 on gate inspections – taught only in IPOTP.
4. Added brief discussion about removing thick outer garments to permit adequate frisk of suspect of weapons.
5. Updated language about necessity of lawful stop to support frisk. Arizona v. Johnson.
6. Added discussion of existence of lawful stop in the special circumstance of a vehicle stop. Arizona v. Johnson. Brendlin v. California.
7. Added Instructor Note on extension of good-faith exception to exclusionary rule to allow admission of evidence despite police error so long as error is negligent and isolated. United States v. Herring.
8. Changed maximum time permitted to execute search warrant to 14 days, reflecting December 2009 amendment to FRCrP 41.
9. Added Michigan v. Fisher (S.Ct. 2009)(emergency aid entry) to examples of exigent circumstances.

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10. Arizona v. Gant. Changed discussion of searching a vehicle incident to the arrest of one of its occupants. Updated new, additional requirements to justify search. Did not change "scope limited to passenger compartment."
11. Added discussion and references for IPOTP EPO on gate inspections.
12. Added Risk Assessment.

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FEB 2011

Revised by

(b)(6),(b)(7)
(C)

2011 revisions highlighted in green.

Locating 2011 Revisions: Changes are preceded by ++. Use Word's Find command for ++ to locate changes quickly.

Summary of 2011 revisions:

Program changes [notes 1, 2, and 3 below] can be significant.

The remaining changes to the body of the LP are not significant. The added cases are mostly illustrative—they either expand on matters which students often ask about or are particularly good examples of concepts we teach.

1. June 2010 – Revised Syllabus to delete and archive programs.
2. November 2010 – Added Instructor Note to EPO's 7 [exceptions to exclusionary rule] and 18 [plain view seizure] to explain differing approaches to UPTP and IPOTP testing strategy.
3. July 2010 – Added Quon. LP o/a p. 340.
4. December 2010 - TIGTA_SAITP to TIGTA_SAATP or SAA per AMcR Dec e-mails. Course length reduced from 4 hours to 2 hours. **COURSE NOW TESTABLE.**
5. December 2010 – Added U.S. v. Day – 4th Circuit case holding that private security guards, even when licensed and given arrest powers by state and even if acting to benefit law enforcement, remained private actors. LP o/a p. 19
6. December 2010 – Added Illinois v. McArthur, illustrative case and discussion of principle that LEO can bar entry to premises to prevent destruction of evidence while they are securing a warrant.. LP o/a pp. 259-260.
7. December 2010 – Added U.S. v. Ortiz and U.S. v. Struckman – Illustrative cases on curtilage. Ortiz applies Dunn factors to find no curtilage in fenced-in lot adjacent to garage not on house property. Struckamn finds curtilage in house's fenced-in backyard. LP o/a pp. 41-42.
6. December 2010 – Added U.S. v. Lewis – OK to have voluntary contact with someone sitting in driver's seat of a parked vehicle. LP o/a pp 66 and 111.
8. December 2010 – Added U.S. v. Muhammed – OK to pull thick wallet from pocket because it may be a weapon or may conceal a weapon like a razor blade. Thick wad of cash protruding from wallet is plainly incriminating in bank robbery suspect's wallet. OK to confirm by matching bills' serial numbers to bait cash from bank robbery. LP o/a pp. 102-103 and 270.

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9. December 2010 – Added U.S. v. Fernandez – OK to demand that passengers of lawfully stopped vehicle identify themselves as long as doing so does not unreasonably extend duration of stop. LP o/a p. 97.
10. December 2010 – Added U.S. v. Thomas– Case contains verbatim search warrant and good illustration of how informant is corroborated with further investigation. LP o/a p. 147.
11. December 2010 – Added U.S. v. Marquez - Occasional passenger lacks standing to object to installation and use of GPS tracker on car he did not own or drive. LP o/a p. 155.
12. December 2010 – Added U.S. v. Navas – Unhitched trailer is inherently mobile and can be searched under Carroll without a warrant so long as probable cause exists. LP o/a pp. 276-277.
13. January 2011 – Added Ray v. Twp. of Warren and short discussion about general inability [circuit split] of community caretaking to justify warrantless entries of homes. LP at o/a pp. 335-336.
12. January 2011 – Added U.S. v. Banuelos-Romero, good fact pattern showing how LEO knowledge combines with observation to develop PC for Carroll search of car with hidden compartment containing drugs. LP at o/a pp. 269-270.
13. January 2011 – Added U.S. v. Cartwright, Evidence seized in pre-Gant SIA of car admitted in post-Gant trial because it would have been inevitably discovered in the police inventory conducted pursuant to policy immediately before the car was towed. LP at o/a pp. 304-305.
14. January 2011 – Added U.S. v. Roberts, Temporary seizure of handgun found during execution of search warrant is reasonable. LP at o/a p. 244.
15. January 2011 – Added U.S. v. Grote, Search of passenger compartment following DUI arrest lawful because reasonable to believe open bottle of alcohol was inside. LP at o/a p. 306.
16. January 2011 - Added FILTP to Syllabus.
17. February 2011 - Added U.S. v. Roberts. Additional authority for proposition that LEO may temporarily retain handguns found during search of premises. LP at o/a p. 245.
18. February 2011 - Added U.S. v. Burkett. Illustrative case of factorins amounting to reasonable suspicion that car passenger may be presently armed and dangerous. LP at o/a pp. 96-97.
19. February 2011 – Added U.S. v. Vinton and U.S. v. Leak. D.C. and 4th Circuits hold that Gant “reasonable to believe” that evidence of crime of arrest is in car is “probably akin to reasonable suspicion. LP o/a p. 308-309.
20. February 2011 – Corrected UPTP syllabus error to reflect that 4th Amendment Computer Based Skills Assessment Lab is now a lab rather than a P.E.

21. April 2011 – Added instructor notes to EPOs #7 and #18 to reflect UPTP – specific teaching and testing items.

NFRC – Will need to update TICs as new test questions become active.

NFRC – Add workplace search EPOs when Lesson Plans are consolidated.

NFRC – Will need to update pending Supreme Court cases [Davis, Tolentino and Camreta/Alford].

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SYLLABUS

COURSE TITLE: FOURTH AMENDMENT

COURSE NUMBER: 1211

COURSE DATE: FEB / 2011 ++ JUNE, DEC2010; JAN2011-UPDATED

LENGTH OF PRESENTATION: VARIES. SEE BELOW

OPTION	LECTURE	LAB	P.E.	TOTAL	PROGRAM
A	24:00	6:00	2:00	32:00	CITP
B	24:00	2:00 ¹		26:00	LMPT
C	22:00	6:00 ²		28:00	UPTP
D	20:00			20:00	ICE-D
E	22:00	4:00		26:00	A_FAMTP
F	2:00			2:00	DOJOIG-IS
G	8:00			8:00	ICITP
H	7:00			7:00	USDA_PSYTP
I	4:00			4:00	A_VCITP
J	20:00	6:00 ³		26:00	IPOTP
K	2:00			2:00	ICE-DOTTP [NOT TESTED]
L	10:00			10:00	FWS_LESB [Pilot – Aug 2010]
M	3:00	1:00		2:00	TIGTA_SAATP or SAA [NOW TESTED]
N	1:00			1:00	USFS-DETP [NOT TESTED]
O	7:00			7:00	CLETP
P	4:00			8:00	DCIS-SARTP
Q	6:30			9:30	FILTP [NOT TESTED]
R	12:00	4		16:00	LMITP

¹ 4th Amendment Computer Based Skills Assessment Lab, evaluated by written, multiple-choice examination.

² 4th Amendment Skills Lab [4 hours] and 4th Amendment Computer Based Skills Assessment Lab [2 hours].

³ IPOTP Labs consist of one 4-hour 4th Amendment Skills Lab and one 2-hour Computer Lab. These are modeled on those used in UPTP and borrow many common features and scenarios.

OPTIONS A & R

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, particularity, and other constitutional safeguards are identified and explained. Emphasis is placed on the proper preparation and execution of search warrants, as well as legal exceptions to the warrant requirements.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards.

OPTIONS B, C AND G

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, particularity, and other constitutional safeguards are identified and explained. Emphasis is placed on the proper preparation and execution of search warrants, as well as legal exceptions to the warrant requirements.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards. UPTP receives little instruction on obtaining and executing search warrants.

OPTIONS D AND K

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, particularity, and other constitutional safeguards are identified and explained.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards.

OPTIONS E AND F

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, and other constitutional safeguards are identified and explained.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the requirements for conducting a legal search both with and without a search warrant in accordance with Federal law and Constitutional standards.

OPTIONS H AND I

DESCRIPTION: This course examines the principles of search and seizure as prescribed by the Fourth Amendment.

TERMINAL PERFORMANCE OBJECTIVE (TPO): Given a potential investigation, the student will identify the constitutional requirements for conducting a legal search in accordance with Federal law and Constitutional standards.

OPTION J	
DESCRIPTION:	This course examines the principles of search and seizure as prescribed by the Fourth Amendment. The exclusionary rule, probable cause, warrantless searches, and other constitutional safeguards are identified and explained. Emphasis is placed on gate inspections.
TERMINAL PERFORMANCE OBJECTIVE (TPO):	Given a potential investigation, the student will identify the requirements for conducting a legal search and submit a legally sufficient criminal complaint in accordance with Federal law and Constitutional standards.
OPTION L [Pilot in August 2010]	
DESCRIPTION:	This course exposes non-law enforcement supervisors to basic Fourth Amendment concepts affecting law enforcement operations in the land management context.
TERMINAL PERFORMANCE OBJECTIVE (TPO):	Given a potential investigation, the student will identify the basic Fourth Amendment concepts applicable to law enforcement operations in the land management context.
OPTION M	
DESCRIPTION:	This course reviews the basic principles of search and seizure for experienced agents. ++ NOW TESTABLE.
TERMINAL PERFORMANCE OBJECTIVE (TPO):	Given a potential investigation, the student will identify the constitutional requirements applicable to search and seizure.
OPTION N	
DESCRIPTION:	This course reviews the basic principles for obtaining and executing for experienced agents.
TERMINAL PERFORMANCE OBJECTIVE (TPO):	Given a potential investigation, the student will identify the constitutional requirements applicable to obtaining and executing search warrants.
OPTIONS O AND P	
DESCRIPTION:	This course updates experienced agents on recent developments in Fourth Amendment law. EPOs are determined for each class with a student-centered approach and are driven by student need and recent case-law, statutory and policy developments.
TERMINAL PERFORMANCE OBJECTIVE (TPO):	Given a potential investigation, the student will identify recent Fourth Amendment developments pertinent to law enforcement operations.
OPTION Q	
DESCRIPTION:	This course updates experienced instructors in basic concepts and recent developments in Fourth Amendment law. EPOs 1 – 7 are reviewed and the remaining EPOs for each class are determined with a student –centered approach driven by student need and recent case-law, statutory and policy developments.
TERMINAL PERFORMANCE OBJECTIVE (TPO):	The student will identify recent Fourth Amendment developments pertinent to instructor duties and law enforcement operations.

ENABLING PERFORMANCE OBJECTIVES (EPO):

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	Master EPO List
1	X	X	1	X	X	X	X		X	X	X					X		1. Recognize when the Fourth Amendment applies to governmental action. MEPO 1211-1
1	X	X	1	X	X	X	X		X	X	X					X		2. Identify situations in which a reasonable expectation of privacy exists. MEPO 1211-2
1	X	X	1	X		X	X		X		X					X		3. Identify appropriate actions that may be taken when reasonable suspicion exists. MEPO 1211-3
1	X	X	1	X	X			X	X	X	X					X		4. Identify when law enforcement officers may or may not use race to justify stops or arrests in accordance with Department of Justice Guidelines. MEPO 1211-4
1	X	X	1	X	X	X			X	X	X					X		5. Identify when probable cause exists to the extent that an arrest or search may be justified. MEPO 1211-5
3	X	X	1	X	X				X	X	X					X		6. Identify the origin, purpose and scope of the exclusionary rule. MEPO 1211-6
3	X	X	1	X	X				X		X					X		7. Identify exceptions to the exclusionary rule, e.g., no standing to object, good faith, inevitable discovery, and impeachment. MEPO 1211-7
3	X	X	3	X					X								X	8. Identify the limitations of an arrest warrant. MEPO 1211-8
3	X	X	3	X					X								X	9. Identify when an arrest involving a felony requires the use of a warrant. MEPO 1211-9
3	X	X	3	X					X								X	10. Identify when an arrest involving a misdemeanor requires the use of a warrant. MEPO 1211-10
3	X	X	3									X	X				X	11. Identify the conditions under which an officer an officer may use force to execute a warrant (search or arrest) according to the provisions of Title 18 U.S.C. § 3109. MEPO 1211-11.
3	X		3										X				X	12. Identify those officials who have the authority to issue Federal search warrants. MEPO 1211-12
3	X		3														X	13. Identify the components of an affidavit for a search warrant. MEPO 1211-13

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	Master EPO List
3												X						14. Identify circumstances when a telephonic search warrant should be obtained. MEPO 1211-14
3	X		3									X	X				X	15. Identify the legal requirements for executing a search warrant, e.g., authority to execute; time of entry; method of entry; locations on a premises which may be searched; duration of the search; and inventory. MEPO 1211-15
3	X	X	3									X	X				X	16. Identify the scope and purpose of a protective sweep. MEPO 1211-16
3	X		3				X					X	X				X	17. Identify circumstances in which persons on the premises may or may not be searched for evidence or frisked during the execution of a premises warrant. MEPO 1211-17
3	X	X	3	X					X		X	X					X	18. Identify the circumstances in which evidence may be seized under the plain view doctrine. MEPO 1211-18
3	X	X	3	X				X	X		X						X	19. Identify fact situations where warrantless searches are allowed regarding motor vehicles. MEPO 1211-19
3	X	X	3	X					X	X	X						X	20. Identify fact situations where warrantless searches are allowed during exigent circumstances, e.g., hot pursuit, destruction or removal of evidence, and emergency scenes. MEPO 1211-20
3	X	X	3	X					X	X	X						X	21. Identify the requirements and scope of a search incident to a lawful arrest. MEPO 1211-21
3	X	X	3	X		X		X	X	X	X						X	22. Identify circumstances where a suspect's consent to search is voluntary. MEPO 1211-22
3	X	X	3	X		X			X	X	X						X	23. Identify the circumstances in which a third party has the actual or apparent authority to grant consent to search a suspect's property. MEPO 1211-23
3	X	X	3	X		X		X	X		X							24. Identify the requirements allowing an inventory of lawfully impounded personal property. MEPO 1211-24
3	X	X	3	X		X			X									25. Identify the circumstances when an inspection is permitted for real and personal property. MEPO 1211-25
																		26. Identify circumstances when a warrant is required to seize vehicles subject to the general forfeiture statute. MEPO 1211-26

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	Master EPO List
									X		X							27. Identify the legal standard for searching people and packages entering and leaving federal buildings and installations. [MEPO 1211-27]

*** Where EPOs are tested on separate exams (e.g., CITP and ICE-D), the Exam for which the EPOs must be taught are provided.

A. STUDENT SPECIAL REQUIREMENTS:

1. Satisfactory Completion of a Criminal Complaint (Options A - C).
2. Satisfactory Completion of an Affidavit and Application for Search Warrant (Option A)
3. Satisfactory Completion of Fourth Amendment Computer-Based Training Scenarios (Options C and J).
4. Satisfactory Completion of "Probable Cause" laboratory (Option A).
5. Students must present an acceptable team generated search warrant application in the 4th hour of instruction for Option M

B. METHOD OF EVALUATION:

1. Written, multiple-choice examination.
2. Satisfactory Completion of a Criminal Complaint (Options A - E).
3. Satisfactory Completion of an Affidavit and Application for Search Warrant (Option A).

INSTRUCTOR GUIDE

METHODOLOGIES:

1. Lecture.
2. Classroom Discussion.
3. Case Briefs.

TRAINING AIDS:

1. Instructor
 - a. Legal Division Handbook [most recent edition]
 - b. Legal Division Reference Book [most recent edition]
 - c. "Warrantless Vehicle Search" Brochure [most recent edition]
 - d. Podcasts – located online at (b)(7)(E)
 - e. Student Guide: Preparing Criminal Complaints, Arrest Warrants and Search Warrants [most recent edition]
 - f. Fourth Amendment Practice Exam [www.fletc.gov/training/programs/legal-division/practice-exams]
 - g. Instructional Videos [location unknown]
 - (1) "The Right to Privacy" – Video #33
 - (2) "Informers – Part 1" – Video #141
 - (3) "Chime! – Search Incident to Arrest" – Video #148
 - (4) "Consent Searches – Part 1, Authority to Consent" – Video #215
 - (5) Search Warrant Lab Guide
 - h. Fourth Amendment Legal Skills Lab Guide
 - i. Fourth Amendment Computer-Based Skills Lab Guide
 - j. Probable Cause Lab Guide
 - k. Phase 9 (Search Warrant Affidavit PE) Guide
2. Student:
 - a. Legal Division Handbook [most recent edition]
 - b. Legal Division Reference Book [most recent edition]
 - c. "Warrantless Vehicle Search" Brochure [most recent edition]
 - d. Podcasts – located online at (b)(7)(E)
 - e. Student Guide: Preparing Criminal Complaints, Arrest Warrants and Search Warrants [most recent edition]
 - f. Fourth Amendment Practice Exam [www.fletc.gov/training/programs/legal-division/practice-exams]

SPECIAL INSTRUCTOR REQUIREMENTS:

NONE

OUTLINE OF INSTRUCTION

I. INTRODUCTION

A. THE FOURTH AMENDMENT

1. **The Language.** The Fourth Amendment to the United States Constitution provides:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
2. **Two Distinct Clauses.** The Fourth Amendment contains two distinct clauses. See [Payton v. New York](#), 445 U.S. 573, 584 (1980) (“As it was ultimately adopted, however, the Amendment contained two separate clauses, the first protecting the basic right to be free from unreasonable searches and seizures and the second requiring that warrants be particular and supported by probable cause”). The first requires that all searches and seizures be reasonable. See [United States v. Jacobsen](#), 466 U.S. 109, 113 (1984) (Noting that the first clause of the Fourth Amendment “protects two types of expectations, one involving ‘searches,’ the other ‘seizures’”). The second clause mandates that probable cause exist before warrants may be issued, and that search warrants particularly describe the place to be searched and things to be seized.

B. AN OVERVIEW OF THE FOURTH AMENDMENT

1. **Courts Prefer Warrants.** “There is a strong preference for searches and entries conducted under the judicial auspices of a warrant.” [United States v. Holloway](#), 290 F.3d 1331, 1334 (11th Cir. 2002), cert. denied, 537 U.S. 1161 (2003). See, e.g., [Illinois v. McArthur](#), 531 U.S. 326, 338 (2001) (Souter, J., concurring) (“Instead, the legitimacy of the decision to impound the dwelling follows from the law’s strong preference for warrants, which underlies the rule that a search with a warrant has a stronger claim to justification on later, judicial review than a search without one”); [United States v. Hodge](#), 246 F.3d 301, 307 (3rd Cir. 2001) (“A grudging or negative attitude by reviewing courts toward warrants is inconsistent with the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant”).
2. **Warrants Can Save An Otherwise Doubtful Search.** “The resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.” [United States v. Ventresca](#), 380 U.S. 102, 109 (1965). See also, [United States v. Leon](#), 468 U.S. 897, 922 (1984) (“Searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search”) (internal brackets and citations omitted); [Jones v. United States](#), 362 U.S. 257, 270-271 (1960) (overruled on other grounds) (“In a doubtful case, when the officer does not have clearly convincing evidence of the immediate need to search, it is most important that resort be had to a warrant, so that the evidence in the possession of the police may be weighed by an independent judicial officer, whose decision, not that of the police, may govern whether liberty or privacy is to be invaded”).

3. **Warrantless Searches are Presumed Unreasonable.** It is firmly ingrained in our system of law that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.” [Mincey v. Arizona](#), 437 U.S. 385, 390 (1978)(emphasis in original) (citation omitted). Thus, while a “defendant normally bears the burden of proving by a preponderance of the evidence that the challenged search or seizure was unconstitutional, where a police officer acts without a warrant, the government bears the burden of proving that the search was valid.” [United States v. Waldrop](#), 404 F.3d 465, 368 (5th Cir. 2005) (internal citations omitted).
4. **No Fourth Amendment Protection for Items Knowingly Exposed to the Public.** “What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” [Katz v. United States](#), 389 U.S. 347, 351 (1967). Alternatively, “what [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.” *Id.* at 351-352.

II. PRESENTATION

A. EPO #1: RECOGNIZE WHEN THE FOURTH AMENDMENT APPLIES TO GOVERNMENTAL ACTION

1. **General Rule – Addresses Government, Not Private, Action.** In [Burdeau v. McDowell](#), 256 U.S. 465, 475 (1921), the Supreme Court noted that “[t]he Fourth Amendment gives protection against unlawful searches and seizures, and ... its protection applies to governmental action. Its origin and history clearly show that it was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies” In sum, the Fourth Amendment does not limit private conduct, whether that conduct is reasonable or unreasonable. [Skinner v. Railway Labor Executives’ Ass’n](#), 489 U.S. 602, 614 (1989). *See also* [United States v. Jacobsen](#), 466 U.S. 109, 113 (1984)(“The Fourth Amendment is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the government or with the participation or knowledge of any government official”)(citation omitted); [United States v. Ellyson](#), 326 F.3d 522, 527 (4th Cir. 2003)(Noting that, because Fourth Amendment regulates only government conduct, “evidence secured by private searches, even if illegal, need not be excluded from a criminal trial”)(quotation omitted).
2. **“Government” Not Limited to Law Enforcement.** The term “government” does not solely refer to law enforcement conduct. Instead, the Fourth Amendment acts as a restraint on the entire government. The Supreme Court “has never limited the [Fourth] Amendment’s prohibition on unreasonable searches and seizures to operations conducted by the police.” [New Jersey v. T.L.O.](#), 469 U.S. 325, 335 (1985). *See also* [Linbrugger v. Abercia](#), 363 F.3d 537, 541 (5th Cir. 2004)(“Generally, the Fourth Amendment’s guarantees apply in both criminal and civil contexts”)(citing [Soldal v. Cook County](#), 506 U.S. 56 (1992)). Accordingly, the Court has held the Fourth Amendment applicable to the activities of civil, as well as criminal, authorities. *See, e.g.,* [Camara v. Municipal Court](#), 387 U.S. 523 (1967)(Building inspectors); [Marshall v. Barlow’s, Inc.](#), 436 U.S. 307 (1978)(Occupational Safety and Health Act inspectors); [Michigan v. Tyler](#), 436 U.S. 499 (1978)(Firemen entering privately-owned premises to battle a fire); [T.L.O.](#), *supra* (Public school officials); and [O’Connor v. Ortega](#), 480 U.S. 709 (1987)(plurality opinion)(State hospital administrators).

3. When is a Search “Private”?

a. **Acting While a Government Instrument or Agent Is Not a “Private” Search.** While “a search or seizure by a private party does not implicate the Fourth Amendment ... the Fourth Amendment does apply to a search or seizure by a party (even if otherwise a private party) who is acting as an ‘instrument or agent’ of the government.” [United States v. Shahid](#), 117 F.3d 322, 325 (7th Cir.), cert. denied, 522 U.S. 902 (1997).

b. **“Private” Searches May Become Government Searches Depending on the Degree of Government Participation.** Whether a private search has become governmental “necessarily turns on the degree of the government’s participation in the private party’s activities ... a question that can only be resolved in light of all the circumstances.” [Skinner](#), 489 U.S. at 614-615 (quotation omitted). In making such a determination, the lower courts used mixed approaches, focusing on a variety of factors, including:

- 1) **Whether the government knows of or acquiesces in the private actor’s conduct.**
- 2) **Whether the private party intends to assist law enforcement officers at the time of the search.**
- 3) **Whether the government affirmatively encourages, initiates, or instigates the private action.**

See, e.g., [United States v. Pervaz](#), 118 F.3d 1, 6 (1st Cir. 1997); [United States v. Ellyson](#), 326 F.3d 522, 527 (4th Cir. 2003); [United States v. Paige](#), 136 F.3d 1012, 1017 (5th Cir. 1998); [United States v. Lambert](#), 771 F.2d 83, 89 (6th Cir. 1985); [United States v. Shahid](#), 117 F.3d 322, 325-326 (7th Cir.), cert. denied, 522 U.S. 902 (1997); [United States v. Malbrough](#), 922 F.2d 458, 462 (8th Cir. 1990), cert. denied, 501 U.S. 1258 (1991); [United States v. Miller](#), 688 F.2d 652, 657 (9th Cir. 1982); [United States v. Smythe](#), 84 F.3d 1240, 1242-1243 (10th Cir. 1996). ++ *See also, U.S. v. Day*, 591 F.3d 679 (4th Cir. 2010). Armed private security officers, although licensed and empowered to arrest under extensive Virginia statutory scheme, remained private actors, and evidence seized by them was admissible. Accused failed to carry his burden of showing that Virginia actively participated in and encouraged the officers’ actions. Even if “the sole or paramount intent of the security officers had been to assist law enforcement, such an intent would not transform a private action into a public action” absent a sufficient showing of Government knowledge and acquiescence [citing [United States v. Shahid](#), 117 F.3d 322, 323 (7th Cir.1997) (concluding that private security officers at shopping mall were not acting as agents of Government)]”.

4. Lawfulness of Government Search That Follows a Private Search

- a. **Searching Only What Has Already Been Searched Privately Does Not Implicate the Fourth Amendment.** When a private citizen intrudes into an individual's property, some portion of the individual's expectation of privacy has been destroyed. "Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now nonprivate information." [United States v. Jacobsen](#), 466 U.S. 109, 117 (1984). In sum, "a police view subsequent to a search conducted by private citizens does not constitute a 'search' within the meaning of the Fourth Amendment so long as the view is confined to the scope and product of the initial search." [United States v. Runyan](#), 275 F.3d 449, 458 (5th Cir. 2001). This is because the conduct of the government agents allows them "to learn nothing that had not previously been learned during the private search." [Jacobsen](#), 466 U.S. at 120.
- b. **Exceeding the Scope of a Private Search Does Implicate the Fourth Amendment.** If the government agents exceed the scope of the private intrusion, a "search" has occurred within the meaning of the Fourth Amendment. [Id.](#) at 117 ("The Fourth Amendment is implicated only if the authorities use information with respect to which the expectation of privacy has not already been frustrated"). See also [Walter v. United States](#), 447 U.S. 649, 657 (1980) (plurality opinion) (Where private search previously conducted, "the Government may not exceed the scope of the private search unless it has the right to make an independent search"); [United States v. Rouse](#), 148 F.3d 1040, 1041 (8th Cir. 1998); [United States v. Kinney](#), 953 F.2d 863, 866 (4th Cir.), cert. denied, 504 U.S. 989 (1992); [United States v. Donnes](#), 947 F.2d 1430, 1434 (10th Cir. 1991).
- c. The Private Search Rationale of [Jacobsen](#) Will Not Always Extend to Private Searches of Residences. The Sixth Circuit has refused to extend the private search rationale outlined above to private searches of residences. See, e.g., [United States v. Allen](#), 106 F.3d 695, 699 (6th Cir.), cert. denied, 520 U.S. 1281 (1997) (refusing to apply [Jacobsen](#) where a motel manager entered the defendant's motel room and discovered controlled substances, then invited police to enter the room to view the same evidence). "Unlike the package at issue in [Jacobsen](#), which contained 'nothing but contraband,' people's homes contain countless personal, non-contraband possessions. Certainly, a homeowner's legitimate and significant privacy expectation in these possessions cannot be entirely frustrated simply because, *ipso facto*, a private party (e.g., an exterminator, a carpet cleaner, or a roofer) views some of those possessions." [United States v. Paige](#), 136 F.3d 1012, 1020 n.11 (5th Cir. 1998), citing [Allen](#), 106 F.3d at 695 (emphasis in original). At least in the Sixth Circuit, therefore, the police would not be authorized to re-enter the home without a warrant to conduct a subsequent viewing of what the private party had previously observed, unless they did so pursuant to consent or exigent circumstances.

- d. The Fifth and Eighth Circuits, however, have held that where the private intrusion is reasonably foreseeable, police may view what the private party has seen without triggering the Fourth Amendment. See, e.g. *Paige*, 136 F.3d at 1019-1021 (hired roofers summoned police to view marijuana they found in attic while looking for supplies with owner's permission; no Fourth Amendment search); *United States v. Bomengo*, 580 F.2d 173 (5th Cir. 1978) (chief engineer of apartment building investigating water leak summoned officer to see two firearms he discovered; no Fourth Amendment search); *United States v. Miller*, 152 F.3d 813 (8th Cir. 1998) (employee of a halfway house unlocked and opened defendant's door to locate him and found drugs inside the room; police may enter room to view what employee saw without triggering the Fourth Amendment).

B. EPO #2: IDENTIFY SITUATIONS IN WHICH A REASONABLE EXPECTATION OF PRIVACY EXISTS

1. **General Rule – “Unreasonable Searches” Are Forbidden.** “The Fourth Amendment forbids searches and seizures that are unreasonable.” *Terry v. Ohio*, 392 U.S. 1, 9 (1967). In *Katz v. United States*, 389 U.S. 347 (1967), the Supreme Court established that a “search” occurs for Fourth Amendment purposes when the government violates a subjective expectation of privacy that society considers objectively reasonable. *Id.* at 361 (Harlan, J., concurring). “If the inspection by police does not intrude upon a legitimate expectation of privacy, there is no ‘search’ subject to the Warrant Clause.” *Illinois v. Andreas*, 463 U.S. 765, 771 (1983).
2. **“Searches” Defined.** A “search” implicating the Fourth Amendment occurs when the government intrudes on an individual’s reasonable expectation of privacy. See *Katz*, 389 U.S. at 361 (Harlan, J., concurring); *Andreas*, 463 U.S. at 771; *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (“A Fourth Amendment search does not occur ... unless ‘the individual manifested a subjective expectation of privacy in the object of the challenged search,’ and ‘society [is] willing to recognize that expectation as reasonable’”); *United States v. Ceballos*, 385 F.3d 1120, 1123 (7th Cir. 2004) (“To assert a Fourth Amendment claim, an appellant must establish a legitimate expectation of privacy”).
3. **“Reasonable Expectation of Privacy” Defined.** “The Fourth Amendment does not protect privacy in any and all circumstances. Among other limitations, a criminal defendant who wishes to embark upon a Fourth Amendment challenge must show that he had a reasonable expectation of privacy in the area searched and in relation to the items seized.” *United States v. Romain*, 393 F.3d 63, 68 (1st Cir. 2004) (citation and internal quotation marks omitted). In *Katz v. United States*, 389 U.S. 347 (1967) (Harlan, J., concurring), the Supreme Court established the standard for determining whether a reasonable expectation of privacy (REP) exists. The test for REP is two-pronged:
 - a. **Subjective Demand.** First, the individual must have exhibited an actual (subjective) expectation of privacy; and,
 - b. **Objectively Reasonable.** Second, that expectation must be one that society is prepared to recognize as reasonable.

If either prong of the test is not met, then no REP exists. For example, "conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable." [Katz](#), 389 U.S. at 361 (Harlan, J., concurring). Further, "what a person knowingly exposes is not constitutionally protected from observation." [Id.](#) at 389 U.S. at 363 (Harlan, J., concurring). "Neither are activities or objects which are exposed, regardless of subjective intent, in a manner inconsistent with reasonable expectations of privacy. Thus, it is not a 'search' to observe that which occurs openly in public. Nor is it a search when a law enforcement officer makes visual observations from a vantage point he rightfully occupies. This applies also to perceptions derived from hearing or smelling." [United States v. Burns](#), 624 F.2d 95, 100 (10th Cir.), [cert. denied](#), 449 U.S. 954 (1980)(citations omitted). "The risk of being overheard by an eavesdropper or betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society." [Hoffa v. United States](#), 385 U.S. 293, 303 (1966)[[citing Lopez v. United States](#), 373 U.S. 427, 465 (1963)(Brennan, J., dissenting)].

4. **Ownership Alone Does Not Automatically Justify REP in an Area or Object.** "While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, ... property rights are neither the beginning nor the end of this ... inquiry." [United States v. Salvucci](#), 448 U.S. 83, 91 (1980). Thus, "ownership alone does not justify a reasonable expectation of privacy." [Shamaeizadeh v. Cunigan](#), 338 F.3d 535, 544 (6th Cir. 2003). *See also* [United States v. Angevine](#), 281 F.3d 1130, 1134 (10th Cir.), [cert. denied](#), 537 U.S. 845 (2002)("Although ownership of the items seized is not determinative, it is an important consideration in determining the existence and extent of a defendant's Fourth Amendment interests")(citation omitted); [United States v. Taketa](#), 923 F.2d 665, 672 (9th Cir. 1991)(noting that "privacy analysis does not turn on property rights"); [Gillard v. Schmidt](#), 579 F.2d 825, 829 (3d Cir. 1978)("Applicability of the Fourth Amendment does not turn on the nature of the property interest in the searched premises, but on the reasonableness of the person's privacy expectation").
5. **Locations Where REP Exists.** Individuals have been found to have REP in a number of different areas and situations. Listed below are some of the more common ones.
 - a. **The Body of the Suspect.** The Supreme Court has made a "distinction between physical evidence below the skin as opposed to outside the skin ... regarding the collection of a variety of categories of physical evidence." [United States v. Nicolosi](#), 885 F. Supp. 50, 53 (E.D.N.Y. 1995). Further, it must be remembered that "the obtaining of physical evidence from a person involves a potential Fourth Amendment violation at two different levels - the 'seizure' of the 'person' necessary to bring him into contact with government agents ... and the subsequent search for and seizure of the evidence." [United States v. Dionisio](#), 410 U.S. 1, 8 (1973). Assuming that the "seizure" of the person is lawful, it must then be determined whether REP exists in the area from which the evidence is to be collected.

- 1) **Intrusions Beneath the Skin Constitute a Search.** It is well-established that “a physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable.” [Skinner v. Railway Labor Executives' Ass'n](#), 489 U.S. 602, 616 (1989). As noted by the Supreme Court in [Schmerber v. California](#), 384 U.S. 757 (1966): “Search warrants are ordinarily required for searches of dwellings, and, absent an emergency, no less could be required where intrusions into the human body are concerned.... The importance of informed detached and deliberate determinations of the issue whether or not to invade another's body in search of evidence is indisputable and great.” *Id.* at 770. See also [Nicolosi](#), 885 F. Supp. at 55 (“On the other end of the continuum is a blood sample and presumably other internal fluids which could only be obtained by extracting them from the body. Obtaining such samples requires full compliance with Fourth Amendment procedures”)... Thus, a Fourth Amendment “search” occurs when evidence is collected from below the skin of the suspect.
 - a) **Blood Sample.** [Schmerber](#), *supra*.
 - b) **Bullet Beneath Skin.** [Winston v. Lee](#), 470 U.S. 753 (1985)(Search occurred when bullet was removed from beneath defendant's skin).
 - c) **Urine Sample.** [Skinner](#), 489 U.S. at 617 (Taking of urine samples is a search “because it is clear that the collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable”).
 - d) **Breathalyzer.** *Id.* at 617-618 (“Subjecting a person to a breathalyzer test, which generally requires the production of alveolar or ‘deep lung’ breath for chemical analysis ... implicates similar concerns about bodily integrity and, like the blood-alcohol test we considered in [Schmerber](#), should also be deemed a search”).
 - e) **Fingernail Scrapings.** [Cupp v. Murphy](#), 412 U.S. 291, 295 (1973)(Taking of fingernail scrapings constitutes a search).
 - f) **Saliva Sample.** [United States v. Nicolosi](#), 885 F. Supp. 50, 56 (E.D.N.Y.1995)(holding that a saliva sample is “properly deemed a search under the Fourth Amendment”).
- 2) **Intrusions Above the Skin Do Not Constitute Searches.** In [Katz](#), *supra*, the Supreme Court held that “what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” *Id.* at 351.

- a) **Voice/Handwriting Samples.** “Accordingly, grand jury subpoenas compelling voice samples, [Dionisio](#), 410 U.S. at 15, and handwriting samples, [United States v. Mara](#), 410 U.S. 19, 21-22 (1973), are not ‘searches’ and therefore do not implicate the Fourth Amendment.” [In re Shabazz](#), 200 F. Supp. 2d 578 (D.S.C. 2002). In both cases, the Supreme Court “reasoned that voice and handwriting exemplars are not protected because the Fourth Amendment ‘provides no protection for what ‘a person knowingly exposes to the public’ Like a man’s facial characteristics, or handwriting, his voice is repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world.” [In re Grand Jury Proceedings \(Mills\)](#), 686 F.2d 135, 138 (3d Cir.), cert. denied, 459 U.S. 1020 (1982)(citations omitted).
 - b) **Fingerprints.** The same is true of fingerprints, in that “fingerprinting involves none of the probing into an individual’s private life and thoughts that marks an interrogation or search.” [Davis v. Mississippi](#), 394 U.S. 721, 727 (1969)(dicta). See also [In re Grand Jury Proceedings Involving Vickers](#), 38 F. Supp. 2d 159, 164 (D.N.H. 1998)(Holding “respondents do not enjoy a constitutionally protected privacy interest in their fingerprints”).
 - c) **Facial Hair.** Further, an individual has no reasonable expectation of privacy in his facial or head hair. See [In re Grand Jury Proceedings \(Mills\)](#), 686 F.2d 135, 139 (3d Cir.), cert. denied, 459 U.S. 1020 (1982)(“We conclude that there is no greater expectation of privacy with respect to hair which is on public display than with respect to voice, handwriting or fingerprints..... If fingerprints can be subjected to compelled disclosure by the grand jury without implicating the Fourth Amendment, it follows logically that the hair strands can as well”); [In re Grand Jury Proceedings Involving Vickers](#), 38 F. Supp. 2d 159, 165 (D.N.H. 1998)(“Thus, it follows that the grand jury’s request for hair samples, like fingerprints, does not implicate respondents’ Fourth Amendment rights”). Of course, an individual will retain an expectation of privacy in bodily hair that is not exposed to the public, such as pubic hair. See [Bouse v. Bussey](#), 573 F.2d 548, 550 (9th Cir. 1977)(Taking of pubic hair sample constituted a search under the Fourth Amendment).
- b. **Vehicles.** Again, an individual’s expectation of privacy in a vehicle depends on whether the exterior or interior of the vehicle is being examined. Further, while “a citizen does not surrender all the protections of the Fourth Amendment by entering an automobile,” [New York v. Class](#), 475 U.S. 106, 112 (1986), an individual has a “reduced expectation of privacy in an automobile, owing to its pervasive regulation.” [Pennsylvania v. Labron](#), 518 U.S. 938, 940 (1996).

- 1) **No Expectation of Privacy in the Exterior of a Vehicle.** There is no expectation of privacy in the outside, or exterior, of a vehicle. As noted by the Supreme Court: "The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a 'search.'" [Class](#), 475 U.S. at 114 [citing [Cardwell v. Lewis](#), 417 U.S. 583, 588-89 (1975)]. See also [United States v. Rascon-Ortiz](#), 994 F.2d 749, 754 (10th Cir. 1993)("The undercarriage is part of the car's exterior, and as such, is not afforded a reasonable expectation of privacy"); [United States v. Muniz-Melchor](#), 894 F.2d 1430 (5th Cir.), cert. denied, 495 U.S. 923 (1990)(Not a search to tap outside of propane tank on a lawfully stopped vehicle); [Cardwell v. Lewis](#), 417 U.S. 583 (1974) (plurality) (not a search to take paint scrapings from a car in a public parking lot and examine its tires).
- 2) **Attaching a Tracking Device to the Exterior of a Vehicle.** The Supreme Court has held that the mere tracking of a vehicle on public streets by means of a similar though less sophisticated device (a beeper) is not a search. [United States v. Knotts](#), 460 U.S. 276, 284-85, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983). But the Court left open the question whether installing the device in the vehicle converted the subsequent tracking into a search. *Id.* at 279 n. 2; see also [United States v. Karo](#), 468 U.S. 705, 713-14, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984). The courts of appeals are divided on the issue. The Seventh and Ninth Circuits have held that attaching a tracking device to the exterior of a vehicle is not a search or seizure and need not be supported by any quantum of suspicion. *U.S. v. Garcia*, 474 F.3d 994 (7th Cir. 2007); [United States v. McIver](#), 186 F.3d 1119, 1127 (9th Cir. 1999). The Fifth Circuit holds that such an intrusion is justified by reasonable suspicion, [United States v. Michael](#), 645 F.2d 252, 256 and n. 11 (5th Cir. 1981) (en banc), while the First, Sixth, and Tenth Circuits require probable cause. [United States v. Moore](#), 562 F.2d 106, 110-12 (1st Cir. 1977); [United States v. Bailey](#), 628 F.2d 938, 944-45 (6th Cir. 1980); [United States v. Shovea](#), 580 F.2d 1382, 1387-88 (10th Cir. 1978).
- 3) **There May Be An Expectation of Privacy in the Interior of the Vehicle.** "While the interior of an automobile is not subject to the same expectations of privacy that exist with respect to one's home, a car's interior as a whole is nonetheless subject to Fourth Amendment protection from unreasonable intrusions by the police." [Class](#), 475 U.S. at 114-115. However, "there is no legitimate expectation of privacy ... shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers." [Texas v. Brown](#), 460 U.S. 730, 740 (1983)(plurality opinion)(citations omitted). See also [Class](#), 475 U.S. at 114 (1986)(In discussing vehicle identification numbers (VIN), Court held "it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile").

- 4) **Lawful Vehicle Stops -- Passengers Generally Have No Expectation of Privacy.** "A passenger in a car that he neither owns nor leases typically has no standing to challenge a search of the car." [United States v. Baker](#), 221 F.3d 438, 441-442 (3rd Cir. 2000)(citation omitted). See also [Rakas v. Illinois](#), 439 U.S. 128, 143 (1978)("There is no legitimacy to a defendant's expectations of privacy where the area searched is in the control of a third party"); [United States v. Barragan](#), 379 F.3d 524, 530 (8th Cir. 2004)(Court note that "mere passenger" had no expectation of privacy in vehicle where passenger's name did not appear on any ownership documents and passenger admitted having no ownership interest vehicle); Of course, a passenger will retain an expectation of privacy in any personal property that he or she has brought into the car with them. See, e.g., [United States v. Welch](#), 4 F.3d 761, 764 (9th Cir. 1993) (While passenger had diminished expectation of privacy in the vehicle, she still maintained expectation of privacy in her purse, because it was "independently the subject of such expectations"); [United States v. Buchner](#), 7 F.3d 1149, 1154 (5th Cir. 1993)("The owner of a suitcase located in another's car may have a legitimate expectation of privacy with respect to the contents of his suitcase").
- 5) **Unlawful Vehicle Stops – Passenger's Right to Challenge a Resulting Search.** A law enforcement officer's stop of an automobile results in a seizure of both the driver and the passenger(s). [Brendlin v. California](#), 127 S. Ct. 2400 (2007). Thus, If either the stopping of the car, the length of the passenger's detention thereafter, or the passenger's removal from it are unreasonable in a [Fourth Amendment](#) sense, then the passenger has standing to object to those constitutional violations and to have suppressed any evidence found in the car which is their fruit. *Id.* at 2408 (citations omitted).
- 6) **Individuals Listed on Rental Agreements Have An Expectation of Privacy in Rental Vehicles.** "A person listed on a rental agreement as an authorized driver has a protected Fourth Amendment interest in the vehicle and may challenge a search of the rental vehicle." [United States v. Walker](#), 237 F.3d 845, 849 (7th Cir. 2001). See also [United States v. Henderson](#), 241 F.3d 638, 646 (9th Cir. 2000), *cert. denied*, 532 U.S. 986 (2001) ("Henderson clearly had a reasonable expectation of privacy in the car because he was a lessee"). The driver retains an expectation of privacy in the rental car even if he keeps the car beyond the contract expiration date, unless the rental company has taken affirmative steps to reclaim the vehicle. [U.S. v. Henderson](#), 241 F.3d 638 (9th Cir. 2000) (Eleventh Circuit agrees).
- 7) **The Courts Are Split on Whether an Individual Who is Not Listed on the Rental Agreement has an Expectation of Privacy.** Several circuits have addressed the issue of whether an unauthorized driver has an expectation of privacy in a rental car.

- a) **REP With Permission.** "At least two courts have held that if the driver of a rental car has the permission of the lessee to drive the vehicle, then he has a legitimate possessory interest and accompanying expectation of privacy sufficient to establish standing to attack an unlawful search of the vehicle." [United States v. Little](#), 945 F. Supp. 79, 83 (S.D.N.Y. 1996), *aff'd*, 133 F.3d 908 (2d Cir. 1998). See [United States v. Muhammad](#), 58 F.3d 353, 355 (8th Cir. 1995); [United States v. Best](#), 135 F.3d 1223, 1225 (8th Cir. 1998); [United States v. Kye Soo Lee](#), 898 F.2d 1034, 1038 (5th Cir. 1990), *cert. denied*, 506 U.S. 1083 (1993)].
 - b) **No REP If Not Authorized Driver.** Three circuit courts have reached a different conclusion. "The Fourth, Tenth, and Eleventh Circuits ... have looked solely to the rental agreement, holding that a driver who is not authorized by the rental company to operate the car does not have standing." [United States v. Haywood](#), 324 F.3d 514, 516 (7th Cir. 2003). See [United States v. Wellons](#), 32 F.3d 117, 119 (4th Cir. 1994), *cert. denied*, 513 U.S. 1157 (1995); [United States v. Roper](#), 918 F.2d 885, 887-88 (10th Cir. 1990); [United States v. McCulley](#), 673 F.2d 346, 352 (11th Cir.), *cert. denied*, 459 U.S. 852 (1982).
 - c) **One Circuit Applies a Fact-Based Approach.** In [United States v. Smith](#), 263 F.3d 572 (6th Cir. 2001), the Sixth Circuit noted that, "as a general rule, an unauthorized driver of a rental vehicle does not have a legitimate expectation of privacy in the vehicle, and therefore does not have standing to contest the legality of a search of the vehicle." *Id.* at 586. Nevertheless, the court refused "to adopt a bright line test ... based solely on whether the driver of a rental vehicle is listed on the rental agreement as an authorized driver." *Id.* Instead, said the court, whether an expectation of privacy exists must be determined by looking at all of the facts of a given case.
- c. **Homes.** An individual has a high expectation of privacy within the confines of his or her home. In fact, the Supreme Court has repeatedly emphasized that the warrantless entry and search of a home is "the chief evil against which the ... Fourth Amendment is directed." [United States v. United States Dist. Court for Eastern Dist. of Mich.](#), 407 U.S. 297, 313 (1972). See also [Silverman v. United States](#), 365 U.S. 505, 511 (1961)("At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion"); [Mincey v. Arizona](#), 437 U.S. 385, 393 (1978)("The Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law"); [Wilson v. Layne](#), 526 U.S. 603, 610 (1999)("The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home"). "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no." [Kyllo v. United States](#), 533 U.S. 27, 31 (2001)(citations omitted).

- 1) **Third Party's Home.** The Supreme Court has held that, "in some circumstances a person may have a legitimate expectation of privacy in the house of someone else." [Minnesota v. Carter](#), 525 U.S. 83, 89 (1998). In such cases, the purpose behind the visitor being at the home is the determining factor in whether an expectation of privacy exists.
 - a) **Overnight Guests and Social Visitors Can Have an Expectation of Privacy.** "A visitor usually lacks a rightful expectation of privacy when present in the home of another - unless the visitor stays overnight." [United States v. Sturgis](#), 238 F.3d 956, 958 (8th Cir.), cert. denied, 534 U.S. 880 (2001)(citing [Carter](#), 525 U.S. at 89-91). See also [Minnesota v. Olson](#), 495 U.S. 91, 96-97 (1990) ("We need go no further than to conclude, as we do, that Olson's status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable"). Similarly, "a social guest's expectation of privacy is constitutionally protected." [United States v. Rhiger](#), 315 F.3d 1283, 1287 (10th Cir. 2003). See also [United States v. Kimoana](#), 383 F.3d 1215, 1221 (10th Cir. 2004)("Overnight guests and joint occupants of motel rooms possess reasonable expectations of privacy in the property on which they are staying"); [United States v. Pollard](#), 215 F.3d 643, 647-48 (6th Cir.), cert. denied, 531 U.S. 999 (2000) (Defendant had reasonable expectation of privacy in premises where he had friendship with homeowner, occasionally spent night at residence, kept some personal belongings there, and was permitted to be in home while owners were absent).
 - b) **Commercial Visitors Generally Has No Expectation of Privacy in a Third Party's Home.** While an "overnight guest" may have a reasonable expectation of privacy in a third party's home, a commercial visitor may not. "A visitor to another's home for commercial purposes retains only a limited privacy interest, because an expectation of privacy in commercial premises is different from, and indeed less than, a similar expectation in an individual's home." [Sturgis](#), 238 F.2d at 958 (internal quotation and citation omitted). See also [Carter](#), 525 U.S. at 91 (Court held commercial visitor has no expectation of privacy because of "the purely commercial nature of the transaction engaged in ..., the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder"); [Rhiger](#), 3315 F.3d at 1291-92 (Noting "an individual does not possess an expectation of privacy to challenge the search of another's property when he or she is present solely for commercial or business reasons").

- 2) **Hotel/Motel Rooms.** “No less than a tenant of a house, or the occupant of a room in a boarding house, a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures.” [Stoner v. California](#), 376 U.S. 483, 490 (1964)(internal citation omitted). See also, [United States v. Gordon](#), 168 F.3d 1222, 1226 (10th Cir.), cert. denied, 527 U.S. 1030 (1999)(“An individual may have a reasonable expectation of privacy in a motel room”); [United States v. Nerber](#), 222 F.3d 597, 600 n.2 (9th Cir. 2000)(“For Fourth Amendment purposes, a hotel room is treated essentially the same, if not exactly the same, as a home”).
- a) **Establishing an Expectation of Privacy in a Hotel/Motel Room.**
In determining whether a defendant established an expectation of privacy in a motel room, courts have examined various factors, including:
- (1) **Whether “a defendant demonstrate[d] that he was the registered occupant of the room,”** [Gordon](#), 168 F.3d at 1226;
 - (2) **Whether the defendant “was sharing [the room] with the person to whom the room was registered,”** [Id.](#);
 - (3) **Whether the defendant ever checked into the room,** [United States v. Carter](#), 854 F.2d 1102, 1105-06 (8th Cir. 1988);
 - (4) **Whether the defendant paid for the room,** [Id.](#) at 1106;
 - (5) **Whether the defendant had the ability to control or exclude others' use of the property,** [Id.](#) at 1105.
- b) **An Expectation of Privacy in a Hotel/Motel Room Generally Expires at Checkout Time.** “As a general rule, a defendant's expectation of privacy in a hotel room expires at checkout time.” [United States v. Dorais](#), 241 F.3d 1124, 1129 (9th Cir. 2001). See also, [United States v. Kitchens](#), 114 F.3d 29, 31 (4th Cir. 1997); [United States v. Allen](#), 106 F.3d 695, 699 (6th Cir.), cert. denied, 520 U.S. 1281 (1997); [United States v. Rahme](#), 813 F.2d 31, 34 (2d Cir. 1987). Nonetheless, “a guest may still have a legitimate expectation of privacy even after his rental period has terminated, if there is a pattern or practice which would make that expectation reasonable.” [Kitchens](#), 114 F.3d at 32. See also [Dorais](#), 241 F.3d at 1129 (“The policies and practices of a hotel may result in the extension past checkout time of a defendant's reasonable expectation of privacy”); [United States v. Cunag](#), 386 F.3d 888, 895 (9th Cir. 2004) (Noting that, “whether a hotel patron retains a reasonable expectation of privacy in his hotel room depends on whether or not management had justifiably terminated the patron's control of the room through private acts of dominion”)(citation and internal quotations marks omitted).

3) **There is Ordinarily No Expectation of Privacy in the Common Areas of Hotels, Motels, and Apartment Buildings.** Six of the seven circuits “that have decided the issue have concluded that tenants do not have a reasonable expectation of privacy in the common areas of their apartment building.” [United States v. Miravalles](#), 280 F.3d 1328, 1331 (11th Cir. 2002). See, e.g., [United States v. Paradis](#), 351 F.3d 21, 31 (1st Cir. 2003) (Noting defendant had no privacy interest in bag of ammunition left on back porch of building because “he had no expectation of privacy in the common areas of a multi-family building,” which in this case was an apartment building); [United States v. Nohara](#), 3 F.3d 1239, 1241-42 (9th Cir. 1993) (Apartment hallway); [United States v. Concepcion](#), 942 F.2d 1170, 1171-72 (7th Cir. 1991) (Apartment common areas); [United States v. Barrios-Moriera](#), 872 F.2d 12, 14-15 (2d Cir. 1989) (Apartment hallway), overruled on other grounds by [Horton v. California](#), 496 U.S. 128 (1990); [United States v. Eisler](#), 567 F.2d 814, 816 (8th Cir. 1977) (Apartment hallway); [United States v. Cruz Pagan](#), 537 F.2d 554, 558 (1st Cir. 1976). “The only circuit that has recognized a reasonable expectation of privacy in the common areas of an apartment building, at least when the door is locked, is the Sixth Circuit.” [Miravalles](#), 280 F.3d at 1332. See [United States v. Carriger](#), 541 F.2d 545, 550 (6th Cir. 1976) (Apartment common areas).

d. **Containers.** “The Supreme Court has long recognized that individuals have an expectation of privacy in closed containers....” [United States v. Runyan](#), 275 F.3d 449, 464 (5th Cir. 2001) (citations omitted). See, e.g., [United States v. Ross](#), 456 U.S. 798, 822-23 (1982) (“The Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view”); [United States v. Jacobsen](#), 466 U.S. 109, 114 (1984) (“Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy”); [United States v. Fultz](#), 146 F.3d 1102, 1105 (9th Cir. 1998) (“A person has an expectation of privacy in his or her private, closed containers”).

1) **Destroying Expectation of Privacy in a Container Through a Private Search.** While an individual can have a reasonable expectation of privacy in a container, that expectation can be destroyed “if that container was opened and examined by private searchers.” [Runyan](#), 275 F.3d at 465. See also, [Jacobsen](#), 466 U.S. at 119 (Holding that “agent’s viewing of what a private party had freely made available for his inspection did not violate the Fourth Amendment”). “Thus, the police do not engage in a new ‘search’ for Fourth Amendment purposes each time they examine a particular item found within the container.” [Runyan](#), 275 F.3d at 465. This issue is discussed more fully in **EPO #1**.

- 2) **No Expectation of Privacy in Containers That Reveal Their Contents.** As a general rule, “for there to be a reasonable expectation of privacy, the contents of a container should not be apparent without opening.” [United States v. Knoll](#), 16 F.3d 1313, 1321 (2d Cir. 1994), cert. denied, 522 U.S. 1118 (1998). See also [United States v. Villarreal](#), 963 F.2d 770, 773 (5th Cir. 1992)(“Individuals can manifest legitimate expectations of privacy by placing items in closed, opaque containers **that conceal their contents from plain view**”)(emphasis added). “Thus, when a container is ‘not closed,’ or ‘transparent,’ or when its ‘distinctive configuration ... proclaims its contents,’ the container supports no reasonable expectation of privacy and the contents can be said to be in plain view.” [United States v. Donnes](#), 947 F.2d 1430, 1437 (10th Cir. 1991).

e. **Curtilage and “Open Fields”.** Throughout its history, the Supreme Court has stressed “the overriding respect for the sanctity of the home that has been embedded ... since the origins of the Republic.” [Oliver v. United States](#), 466 U.S. 170, 178 (1984)(citations omitted). Included within the protections afforded a home are those areas that fall within a home’s “curtilage,” but not those areas of an individual’s property that are considered “open fields.” See, e.g., [United States v. Gerard](#), 362 F.3d 484, 487 (8th Cir. 2004)(“The Fourth Amendment protects a home and its curtilage - the area immediately surrounding a dwelling house - from unreasonable warrantless searches”); [United States v. Cavely](#), 318 F.3d 987, 995 (10th Cir. 2003)(“The protections of the Fourth Amendment may extend beyond the home itself”).

- 1) **Curtilage Defined.** “Curtilage” has been defined as “the area to which extends the intimate activity associated with the ‘sanctity of a man’s home and the privacies of life.’” [Oliver](#), 466 U.S. at 180. As such, curtilage “has been considered part of the home itself for Fourth Amendment purposes,” [id.](#), and an individual has a reasonable expectation of privacy in the curtilage surrounding a dwelling. See also [United States v. French](#), 291 F.3d 945, 951 (7th Cir. 2002) (Defining a home’s “curtilage” as “the area outside the home itself but so close to and intimately connected with the home and the activities that normally go on there that it can reasonably be considered part of the home”).
- 2) **Open Fields Defined.** Alternatively, “open fields” have been defined as “any unoccupied or undeveloped area outside of the curtilage.” [Id.](#) “No expectation of privacy legitimately attaches to open fields.” [Id.](#) The phrase “open fields” is somewhat misleading, in that “an open field need be neither ‘open’ nor a ‘field’ as those terms are used in common speech.” [Id.](#) So, for example, “a thickly wooded area nonetheless may be an open field as that term is used in construing the Fourth Amendment.” [Id.](#)

- 3) **Evaluating Whether Property is Curtilage.** “For most homes, the boundaries of the curtilage will be clearly marked; and the conception defining the curtilage - as the area around the home to which the activity of home life extends - is a familiar one easily understood from our daily experience.” [United States v. Dunn](#), 480 U.S. 294, 302 (1987)(citation omitted). This will not always be the case, however, especially in more rural settings. See, e.g., [United States v. Reilly](#), 76 F.3d 1271, 1277 (2d Cir. 1996)(“In a modern urban multifamily apartment house, the area within the ‘curtilage’ is necessarily much more limited than in the case of a rural dwelling subject to one owner’s control”).
- a) **Four Factors Are Considered in Determining Whether An Area is Part of a Home’s Curtilage.** Accordingly, in [Dunn](#), *supra*, the Supreme Court announced four factors that must be considered when determining whether a given area is part of a home’s curtilage. In utilizing these four factors, however, the Court has emphasized to the lower courts that these factors are not to be “mechanically applied,” *id.* at 301, but are useful “only to the degree that, in any given case, they bear upon the centrally relevant consideration - whether the area in question is so intimately tied to the home itself that it should be placed under the home’s ‘umbrella’ of Fourth Amendment protection.” *Id.*
- (1) **Proximity.** First, the proximity of the area claimed to be curtilage to the home must be considered. Courts have repeatedly refused to fix a specific distance at which curtilage ends. See, e.g., [French](#), 291 F.3d at 952 (“A curtilage line ‘cannot be located merely by taking measurements from some other case or precedent and then by use of a tape measure trying to determine where the curtilage is in a different case’”)[citing [United States v. Redmon](#), 138 F.3d 1109, 1112 (7th Cir. 1998)(en banc), *cert. denied*, 525 U.S. 1066 (1999)]; [Reilly](#), 76 F.3d at 1277 (“On a large parcel of land, a pond 300 feet away from a dwelling may be as intimately connected to the residence as is the backyard grill of the bloke next door”); [United States v. Van Dyke](#), 643 F.2d 992, 994 (4th Cir. 1981) (“Distance is just one of many factors to be weighed when determining the reach of the curtilage”).

- (2) **Common Enclosure.** Second, courts must consider whether the area in question is included within a single enclosure surrounding the home. "Fencing configurations are important factors in defining the curtilage." [Dunn](#), 480 U.S. at 301 n.4. These "fencing" configurations may be artificial or natural. See, e.g., [Hart v. Myers](#), 183 F. Supp. 2d 512, 523 (D. Conn. 2002) ("Natural 'barriers satisfy the requirements of an enclosure'"); [Williams v. Garrett](#), 722 F. Supp. 254, 261 (W.D. Va. 1989) ("Requiring a person to expend resources and sacrifice aesthetics by building a fence in order to obtain protection from unreasonable searches is not required by the constitution"). Typically, the enclosure factor weighs against those who claim infringement of the curtilage when their land is divided into separate parts by internal fencing." [Reilly](#), 76 F.3d at 1278. For example, in [Dunn](#), *supra*, there was an internal fence separating the barn from the home. According to the Court, this fence "serve[d] to demark a specific area of land immediately adjacent to the house that is readily identifiable as part and parcel of the house." [Dunn](#), 480 U.S. at 302. Thus, "the proper focus of this factor is on whether interior fencing clearly demarcates the curtilage." [United States v. Traynor](#), 990 F.2d 1153, 1158 (9th Cir. 1993). However, "the Supreme Court has rejected a bright line rule that 'the curtilage should extend no farther than the nearest fence surrounding a fenced house.'" [Hart](#), 183 F. Supp. at 523.
- (3) **Use.** Third, the nature of the uses to which the area is put is a factor that must be taken into account. In [Dunn](#), *supra*, the Court found it "especially significant that the law enforcement officials possessed objective data indicating that the barn was not being used for intimate activities of the home." [Dunn](#), 480 U.S. at 302. "[T]his factor requires consideration of whether the property is used to 'harbor those intimate activities associated with domestic life and the privacies of home.'" [Hart](#), 183 F. Supp. at 523 (citation omitted). See, e.g., [Gerard](#), 362 F.3d at 488 (In case involving a detached garage, court noted: "We believe that reasonable officers would expect that the garage was likely to be used for private activities. The garage's doors were locked, electricity was wired to the garage, and it was close to the farmhouse, which are typical signs of private activities").

- (4) **Steps Taken to Prevent Observation.** Finally, the steps taken by the resident to protect the area from observation by people passing by are to be considered in the analysis. For example, "No Trespassing" signs may be significant as an effort to protect the inner areas of a parcel of land from observation. However, this fact is not, in and of itself, dispositive of the curtilage issue. See, e.g., [Oliver](#), 466 U.S. at 183 n.13 ("Certainly the Framers did not intend that the Fourth Amendment should shelter criminal activity wherever persons with criminal intent choose to erect barriers and post 'No Trespassing' signs"); [Gerard](#), 362 F.3d at 488 (In finding that garage was not within curtilage of home, court noted that, "[n]o internal fences prevented persons from approaching the garage. Also, Gerard posted no signs excluding strangers from access to the garage. Gerard did nothing to cover the marijuana odor escaping from the vent of the garage. Lastly, the garage was not completely blocked from view of members of the public driving down the street"); [United States v. Roberts](#), 811 F. Supp. 21, 23 (D. Me. 1993) ("No trespassing signs do not confer a reasonable expectation of privacy in activities taking place in otherwise open fields").

- 4) **Miscellaneous Issues Regarding Curtilage and Open Fields.** The following issues regarding curtilage and open fields have been addressed to varying degrees by a number of different courts.

- a) **Driveways and Walkways.** "[D]riveways that are readily accessible to visitors are not entitled to the same degree of Fourth Amendment protection as are the interiors of defendants' houses." [United States v. Reyes](#), 283 F.3d 446, 465 (2d Cir.), cert. denied, 537 U.S. 822 (2002)(collecting cases). See also [Rogers v. Vicuna](#), 264 F.3d 1, 5 (1st Cir. 2001) (Noting "a person does not have a reasonable expectation of privacy in a driveway that was visible to the occasional passerby")(citation omitted); [Maisano v. Welcher](#), 940 F.2d 499, 503 (9th Cir. 1991), cert. denied sub nom. [Maisano v. IRS](#), 504 U.S. 916 (1992) ("In order to establish a reasonable expectation of privacy in their driveway, the plaintiffs must support that expectation by detailing the special features of the driveway itself (i.e. enclosures, barriers, lack of visibility from the street) or the nature of activities performed upon it"); [United States v. Smith](#), 783 F.2d 648, 650 (6th Cir. 1986)(No reasonable expectation of privacy in driveway accessible and visible from public highway); [United States v. Ventling](#), 678 F.2d 63, 66 (8th Cir. 1982) (Because "a driveway and portion of the yard immediately adjacent to the front door of the residence can hardly be considered out of public view," extending privacy protections would not be reasonable).

- (1) **Entry By Law Enforcement Officers Onto Private Property.** "Law enforcement officers may encroach upon the curtilage of a home for the purpose of asking questions of the occupants." [United States v. Hammett](#), 236 F.3d 1054, 1059 (9th Cir. 2001), [cert. denied](#), 534 U.S. 866 (2001). Accordingly, "[w]hen the police come on to private property to conduct an investigation ... and restrict their movements to places visitors could be expected to go (e.g., walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment." [United States v. Hatfield](#), 333 F.3d 1189, 1194 (10th Cir. 2003)(citation omitted). See also [United States v. Carter](#), 360 F.3d 1235, 1239 (10th Cir. 2004)(No search or seizure occurred where officers drove by the defendant's house twice, parked nearby, walked up the driveway, and shone their flashlights into a car in the driveway); [United States v. Taylor](#), 90 F.3d 903, 909 (4th Cir. 1996)("Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned violation of the person's right of privacy, for any one openly and peaceably ... to walk up the steps and knock on the front door of any man's 'castle' ... whether the questioner be a pollster, a salesman, or an officer of the law")(citation omitted).
- (2) **Observations Made While Approaching a Person's Front Door.** Additionally, "officers walking up to the front door of a house can look inside through a partially draped open window without conducting a Fourth Amendment search." [United States v. Garcia](#), 997 F.2d 1273, 1279 (9th Cir. 1993). See also [Taylor](#), 90 F.3d at 909 (Holding that observations by law enforcement officers into a dining room through a window adjacent to front door did not constitute a search within the meaning of the Fourth Amendment because, by "expos[ing] their dining room and its contents to anyone positioned at the front entranceway of their home, the Taylors possessed no reasonable expectation of privacy in the dining room or its openly visible contents").

- b) **Officers May Move Around the House in a Good Faith Effort to Contact a Resident.** Various courts have recognized “that officers must sometimes move away from the front door when they are attempting to contact the occupants of a residence.” [Garcia](#), 997 F.2d at 1279. See [United States v. Daoust](#), 916 F.2d 757, 758 (1st Cir. 1990)(Held that, if the front door to the residence is inaccessible, “there is nothing unlawful or unreasonable about going to the back of the house to look for another door, all as part of a legitimate attempt to interview a person”); [United States v. Anderson](#), 552 F.2d 1296, 1300 (8th Cir. 1977) (“We cannot say that the agents’ action in proceeding to the rear after receiving no answer at the front door was so incompatible with the scope of their original purpose that any evidence inadvertently seen by them must be excluded as the fruit of an illegal search”); [Hammett](#), 236 F.3d at 1060 (“To the extent our previous holdings have failed squarely to resolve this issue, we now make it clear that an officer may, in good faith, move away from the front door when seeking to contact the occupants of a residence”). In such situations, “the subsequent discovery of evidence in plain view does not (generally) violate the Fourth Amendment.” [Garcia](#), 997 F.2d at 1279.

Illustrative cases. ++ [United States v. Ortiz](#), 2010 U.S. Dist. LEXIS 95614 (3rd Cir. 2010) [case arose from undercover drug buy in York, PA} . Applying Dunn factors, curtilage did not exist in a fenced-in lot next to a garage with a different address and not adjacent to the suspect’s residence because of lack of proximity with the home, lack of evidence of “intimate activities” occurring in garage, and ability to observe activities in the lot over portion of perimeter fenced only with 4 or 5-cinder-block-high wall. [U.S. v. Struckman](#), 603 F.3d 731 (9th Cir. 2010) Responding to a neighbor’s daytime 911 call about a prowler, two officers entered Struckman’s backyard by climbing its 6-foot fence and kicking open its gate. Struckman was in the yard, locked out of the house. He matched the description of the prowler and was promptly arrested. SIA of his nearby backpack produced a pistol the led to conviction of felon-in-possession and a 17-year sentence under the Armed Career Criminal Act. On appeal, the 9th Circuit suppressed the pistol and vacated the conviction. The fenced backyard was curtilage. Struckman had REP there; hence LEO entry was invalid. Even had this entry been justified by exigent circumstances [and the 9th Circuit held that it was not], because the police failed to ask Struckman if he lived there, the arrest was not supported by probable cause. Suppression of the pistol mandated vacating the conviction.

- f. **Government Employees May Have An Expectation of Privacy in Government Workspaces.** In [O'Connor v. Ortega](#), 480 U.S. 709 (1987)(plurality opinion), the Supreme Court addressed whether a government employee may establish a reasonable expectation of privacy in a government workspace. In sum, government employees can, and often do, establish expectations of privacy in their government offices, filing cabinets, and computers. See [McGregor v. Greer](#), 748 F. Supp. 881, 888 (D.D.C. 1990) (Reiterating [O'Connor's](#) holding that "a government employee may be entitled to a reasonable expectation of privacy in her office"). As a general rule, "where a public employee has [his or] her own office or desk which co-workers and superiors normally do not enter, and where no agency policy or regulation warns the employee that an expectation of privacy is unreasonable, an expectation of privacy may be reasonable." [Id.](#) Nonetheless, a government employee's expectation of privacy is limited by the "operational realities of the workplace," [O'Connor](#), 480 U.S. at 717, and "whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis." [Id.](#) at 718. In determining whether a government employee has a reasonable expectation of privacy in his or her workspace, courts have utilized a variety of factors. Among the most important are the following:

- 1) **Prior Notice to the Employee May Destroy an Expectation of Privacy.** "In general, government employees who are notified that their employer has retained rights to access or inspect information stored on the employer's computers can have no reasonable expectation of privacy in the information stored there." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, Department of Justice, at 41 (March 2001). This is consistent with the Supreme Court's holding in [O'Connor](#) that an employee's expectation of privacy can be reduced through "legitimate regulation." [O'Connor](#), 480 U.S. at 717. See, e.g., [United States v. Thorn](#), 375 F.3d 679, 683 (8th Cir. 2004)(Noting the defendant "did not have any legitimate expectation of privacy with respect to the use and contents of his [government] computer," because he was "fully aware of the computer-use policy, as evidenced by his written acknowledgment of the limits imposed on his computer-access rights in 2000"); [United States v. Simons](#), 206 F.3d 392, 398 (4th Cir. 2000)(Where "policy placed employees on notice that they could not reasonably expect that their Internet activity would be private," the employee "did not have a legitimate expectation of privacy with regard to the record or fruits of his Internet use").

- 2) **Common Practices and Procedures May Destroy an Expectation of Privacy.** In [O'Connor](#), the Supreme Court recognized that "public employees' expectations of privacy in their offices, desks, and file cabinets ... may be reduced by virtue of actual office practices and procedures" [O'Connor](#), 480 U.S. at 717. See also [Gillard v. Schmidt](#), 579 F.2d 825, 829 (3rd Cir. 1978)(Holding that "an employer may conduct a search in accordance with a regulation or practice that would dispel in advance any expectations of privacy")(citation omitted). Alternatively, common office practices and procedures may permit a government employee to establish an expectation of privacy in an area where one would otherwise not exist. See, e.g., [United States v. Speights](#), 557 F.2d 362, 364 (3rd Cir. 1977) (Search of locker impermissible where, *inter alia*, "no regulation and no police practice" existed to justify the search); [United States v. Donato](#), 269 F. Supp. 921, 923 (E.D. Pa.), *aff'd*, 379 F.2d 288 (3rd Cir. 1967) (Search of a locker maintained by an employee of the United States Mint upheld because, among other things, the locker was "regularly inspected by the Mint security guards for sanitation purposes"); [Shaffer v. Field](#), 339 F. Supp. 997, 1003 (C.D. Cal. 1972), *aff'd*, 484 F.2d 1196 (9th Cir. 1973)(Search of a police officer's locker upheld in part because three previous searches had been conducted in the past); [United States v. Taketa](#), 923 F.2d 665, 673 (9th Cir. 1991) (Holding that government employee had a reasonable expectation of privacy in his office because, *inter alia*, the office was "not open to the public and was not subjected to regular visits of inspection by DEA personnel"); [Schowengerdt v. United States](#), 944 F. 2d 483, 488 (9th Cir. 1991)(Holding no reasonable expectation of privacy in office or credenza due to "extremely tight security procedures," to include "frequent scheduled and random searches by security guards").

- 3) **Openness and Accessibility May Destroy an Expectation of Privacy.** Courts will often look to the openness or accessibility of a workspace to determine whether an expectation of privacy can be sustained. Among the factors that are considered are “the employee’s relationship to the item seized; whether the item was in the immediate control of the employee when it was seized; and whether the employee took actions to maintain his privacy in the item.” [United States v. Angevine](#), 281 F.3d 1130, 1134 (10th Cir.), cert. denied, 537 U.S. 845 (2002). The more accessible the item or area is to others, the less likely it is an individual employee’s claim of privacy would be accepted. See, e.g., [Thorn](#), 375 F.3d at 684 (Employee’s reasonable expectation of privacy in office, desk and filing cabinet “was limited in scope because other DCSE employees had keys that allowed them to access the office and the contents of the desk and cabinets”). The more the item or area in question was given over to an employee’s exclusive use, the more likely an expectation of privacy would be found. As a general rule, “where a public employee has his or her own office or desk which co-workers and superiors normally do not enter, and where no agency policy or regulation warns the employee that an expectation of privacy is unreasonable, an expectation of privacy may be reasonable.” [McGregor](#), 748 F. Supp. at 888. Offices that are “continually entered by fellow employees and other visitors during the workday for conferences, consultations, and other work-related visits ... may be so open to fellow employees or the public that no expectation of privacy is reasonable.” [O’Connor](#), 480 U.S. at 717-718 (plurality). “Ordinarily, business premises invite lesser privacy expectations than do residences.” [Vega-Rodriguez v. Puerto Rico Telephone Company](#), 110 F.3d 174, 178 (1st Cir. 1997)[citing [G.M. Leasing Corp. v. United States](#), 429 U.S. 338, 353 (1977)]. Where areas are, by their very nature, “open” and “public,” no reasonable expectation of privacy can exist in that area. See [Thompson v. Johnson County Community College](#), 930 F. Supp. 501, 507 (D. Kan. 1996)(“Security personnel and other college employees, including maintenance and service personnel, had unfettered access to this storage room. Consequently, defendants argue that the open, public nature of the security personnel locker area defeats any reasonable expectation of privacy in this area. The court agrees”). For example, where an unlocked desk or credenza was located in an “open, accessible area,” no reasonable expectation of privacy was found to exist. [O’Bryan v. KTVI Television](#), 868 F. Supp. 1146, 1159 (N.D. Iowa 1994). Nonetheless, the existence of a master key will not defeat an employee’s expectation of privacy in his or her office. [Taketa](#), 923 F.2d at 673 (“Furthermore, the appellants correctly point out that allowing the existence of a master key to overcome the expectation of privacy would defeat the legitimate privacy interest of any hotel, office, or apartment occupant”). Nor does an employee’s failure to consistently shut and lock the office door automatically sacrifice any expectation of privacy in that area. [Id.](#) (“Nor was the expectation of privacy defeated by O’Brien’s failure to shut and lock his doors at all times”). Just because others may be permitted access to an employee’s office does not automatically destroy the employee’s privacy expectation.

- 4) **Position of the Employee May Destroy an Expectation of Privacy.** In determining whether a reasonable expectation of privacy exists, courts will consider the position occupied by the employee who was the subject of the workplace search. This is especially true where the subject of the search is a law enforcement officer. Law enforcement officers do not lose their Constitutional rights by virtue of accepting their position. [Garrity v. State of New Jersey](#), 385 U.S. 493, 500 (1967)(Law enforcement officers "are not relegated to a watered-down version of Constitutional rights"). Nonetheless, there is a "substantial public interest in ensuring the appearance and actuality of police integrity," in that "a trustworthy police force is a precondition of minimal social stability in our imperfect society." [Biehunik v. Felicetta](#), 441 F.2d 228, 230 (2d Cir. 1971). This "interest in police integrity ... may justify some intrusions on the privacy of police officers which the Fourth Amendment would not otherwise tolerate." [Kirkpatrick v. City of Los Angeles](#), 803 F.2d 485, 488 (9th Cir. 1986). See, e.g., [Biehunik](#), 441 F.2d at 231 (Court noted, "policemen, who voluntarily accept the unique status of watchman of the social order, may not reasonably expect the same freedom from governmental restraints which are designed to ensure his fitness for office as from similar governmental actions not so designed"); [Sheppard v. Beerman](#), 18 F.3d 147, 152 (2d Cir. 1994)(Law clerk had no reasonable expectation of privacy in desk based upon the unique "working relationship between a judge and her clerk").
- 5) **An Employee May Waive an Expectation of Privacy.** Occasionally, a government employee may actually waive his or her expectation of privacy as a precondition of receiving a certain benefit from their employer. For example, in [American Postal Workers Union v. United States Postal Service](#), 871 F.2d 556 (6th Cir. 1989), postal employees were eligible to receive personal lockers at their postal facility. Before being allowed to do so, however, each employee had to sign a waiver that noted the locker was "subject to inspection at any time by authorized personnel." [Id.](#) at 557. Further, the administrative manual of the Postal Service noted that all property provided by the Postal Service was "at all times subject to examination and inspection by duly authorized postal officials in the discharge of their official duties." [Id.](#) Finally, the collective bargaining agreement for these employees "provided for random inspection of lockers under specified circumstances." [Id.](#) As noted by the court: "In light of the clearly expressed provisions permitting random and unannounced locker inspections under the conditions described above, the collective class of plaintiffs had no reasonable expectation of privacy in their respective lockers that was protected by the Fourth Amendment." [Id.](#) at 560.

- g. **There is No Expectation of Privacy in Abandoned Property.** Abandoned property is not subject to Fourth Amendment protection. [Abel v. United States](#), 362 U.S. 217, 241 (1960). Accordingly, an individual does not have a reasonable expectation of privacy in property that he or she has abandoned. See, e.g., [United States v. Tugwell](#), 125 F.3d 600, 602 (8th Cir. 1997), cert. denied, 522 U.S. 1061 (1998) (“A warrantless search of abandoned property is constitutional because ‘any expectation of privacy in the item searched is forfeited upon its abandonment’”). “The test for abandonment is whether an individual has retained any reasonable expectation of privacy in the object. This determination is to be made by objective standards. An expectation of privacy is a question of intent which may be inferred from words spoken, acts done, or other objective facts.” [United States v. Rem](#), 984 F.2d 806, 810 (7th Cir.), cert. denied, 510 U.S. 913 (1993). See also [United States v. Garzon](#), 119 F.3d 1446, 1449 (10th Cir. 1997)(Same) “[T]he individual is treated as having abandoned an object if it would be unreasonable in the circumstances for the person to have an expectation of privacy with respect to that object.” [United States v. Burbage](#), 365 F.3d 1174, 1178 (10th Cir. 2004).
- 1) **There are Two General Means of Abandoning Property.** As a general rule, abandonment takes place when an individual relinquishes any expectation of privacy in an object, either through word or deed. See [United States v. Cofield](#), 272 F.3d 1303, 1306 (11th Cir. 2001) (“An individual who abandons or denies ownership of personal property may not contest the constitutionality of its subsequent acquisition by the police”).

- a) **Abandonment May Occur Through a Denial of Ownership.** An individual may “abandon” an expectation of privacy in an object by denying ownership of the object. *See, e.g., United States v. Fulani*, 368 F.3d 351, 354 (3rd Cir. 2004)(Where defendant “disclaim[ed] ownership of every bag located in the overhead rack, including the one that bore his name on it,” he had “abandoned ownership in his bag, effectively waiving his right to bar its search”); *Burbage*, 365 F.3d at 1178 (“By affirmatively denying to [the officer] that he owned the backpack, Defendant lost any objectively reasonable expectation of privacy in the backpack as a whole. To deny ownership is to announce to the world, ‘you want it, you can have it, as far as I’m concerned’”); *United States v. Dillard*, 78 Fed. Appx. 505, 510 (6th Cir. 2003) (unpublished) (“When a person has disclaimed ownership of a discarded item or container, courts have repeatedly held that the person has no legitimate expectation of privacy in the item or container and has thus abandoned it”); *United States v. Caballero-Chavez*, 260 F.3d 863, 867 (8th Cir. 2001) (“Given the defendants’ repeated disclaimers, the district court’s finding that they abandoned any interest in Room 222 and its contents is not clearly erroneous”); *United States v. McDonald*, 100 F.3d 1320, 1327 (7th Cir. 1996), *cert. denied*, 520 U.S. 1258 (1997) (Abandonment through disclaimer occurred when defendant “denied ownership both when [the officer] directly asked her whether she owned the suspect bags and collectively asked all the bus passengers if anyone owned the luggage in question”); *United States v. Han*, 74 F.3d 537, 543 (4th Cir.), *cert. denied*, 517 U.S. 1239 (1996) (“Denial of ownership ... constitutes abandonment”)(citation omitted).

NOTE: In these types of situations, abandonment is proper even where a law enforcement officer subjectively knows or believes that the suspect possessed or owned the property in question. *See, e.g., Fulani*, 368 F.3d at 355 (Where defendant “refuse[d] to claim luggage with his nametag on three separate occasions,” court determined “he no longer ha[d] a reasonable expectation of privacy in his luggage”); *Han*, 74 F.3d at 545 (“Whether the officers knew that Han owned the bag is irrelevant. The constitutional property right belonged to Han, and his abandonment of that right did not depend on whether the officers knew that it existed”) *United States v. Ruiz*, 935 F.2d 982, 984 (8th Cir. 1991)(Officers may reasonably believe that a suspect’s disclaimer of an interest in luggage is an abandonment of his privacy interest, even if they have other evidence of possession).

- b) **Abandonment May Occur Through the Discarding of an Object.** An individual may also “abandon” an expectation of privacy in an object by discarding it. See, e.g., [United States v. Bradshaw](#), 102 F.3d 204, 213 (6th Cir. 1996), cert. denied, 520 U.S. 1178 (1997) (Defendant abandoned property when, “while fleeing, [he] discarded the pill bottles” containing crack cocaine); [United States v. Segars](#), 31 F.3d 655, 658 (8th Cir. 1994), cert. denied, 513 U.S. 1099 (1995) (Abandonment occurred when defendant, “confronted by police officers ... dropped the package, backed away from the apartment door and attempted to flee”); [United States v. Trimble](#), 986 F.2d 394, 398 (10th Cir.), cert. denied, 508 U.S. 965 (1993) (Abandonment occurred when the defendant “removed an amber vial from his pants pocket and attempted to drop it to the ground”).
- 2) **Abandonment May Not Be Caused By Police Misconduct.** An individual’s abandonment of certain property may be found involuntary when it is preceded by unlawful police misconduct. [Cofield](#), 272 F.3d at 1307. See also [McDonald](#), 100 F.3d at 1328 (“An abandonment that results from police misconduct is not valid”); [United States v. Washington](#), 146 F.3d 536, 537 (8th Cir. 1998), cert. denied, 531 U.S. 1015 (2000) (“The general principle is, ‘if an illegal search taints a subsequent act of abandonment, evidence acquired after the abandonment ought to be suppressed as the fruit of the unlawful search’”) (citation omitted); [Fulani](#), 368 F.3d at 355 (Same).

NOTE: However, for the abandonment to be considered involuntary due to police misconduct, there must be a nexus between the misconduct and the abandonment. For example, where the abandonment was the direct result of an unlawful seizure, the abandonment may be found to be involuntary. See, e.g., [United States v. Lewis](#), 921 F.2d 1294, 1302 (D.C. Cir. 1990) (“An abandonment may be involuntary, and thus invalid, where it results directly from police misconduct, such as an illegal search or seizure product of an unlawful seizure”). See also [United States v. Gilman](#), 684 F.2d 616, 620 (9th Cir. 1982) (“There must be a nexus between the allegedly unlawful police conduct and abandonment of property if the challenged evidence is to be suppressed”); [United States v. Boone](#), 62 F.3d 323, 326 (10th Cir.), cert. denied, 516 U.S. 1014 (1995) (“While it is true that a criminal defendant’s voluntary abandonment of evidence can remove the taint of an illegal stop or arrest, it is equally true that for this to occur, the abandonment must be truly voluntary and not merely the product of police misconduct”) (citation omitted); [United States v. Leshuk](#), 65 F.3d 1105, 1111 (4th Cir. 1995) (Noting that, “although a person does not voluntarily abandon property when the abandonment results from police misconduct,” suppression not required because investigative stop of defendant was lawful”).

- h. **Garbage.** When analyzing the search and seizure of garbage, the location of the garbage at the time of the seizure is critical.

- 1) **There is an Expectation of Privacy in Garbage Inside the Home.** An individual would clearly have a reasonable expectation of privacy in garbage located inside their home... See [United States v. Kramer](#), 711 F.2d 789, 793 (7th Cir.), cert. denied, 464 U.S. 962 (1983)("We do not doubt ... that had the police broken into the defendant's house and removed the records from a waste paper basket in defendant's bedroom, the records would not be admissible as evidence against him, even if all that was in the waste-paper basket was garbage"); [United States v. Certain Real Property Located at 987 Fisher Road](#), 719 F. Supp. 1396, 1405 (E.D. Mich. 1989)("A reasonable expectation of privacy in garbage would be at its greatest level when the garbage is still being accumulated in the home"). However, when the garbage has been removed from the home, different issues arise regarding the warrantless search and seizure of garbage.
- 2) **There is No Expectation of Privacy in Garbage On the Curb of a Public Street.** "The warrantless search and seizure of the garbage bags left at the curb outside [a defendant's] house would violate the Fourth Amendment only if [the defendant] manifested a subjective expectation of privacy in their garbage that society accepts as objectively reasonable." [California v. Greenwood](#), 486 U.S. 35, 39 (1988). When garbage is placed on the curb of a public street, it is "readily accessible to animals, children, scavengers, snoops, and other members of the public." *Id.* at 40 (citation omitted)(internal footnotes omitted). Further, placement of the garbage in this location is done for the specific purpose of giving it to a third party (i.e., the trash collector), who may himself choose to examine its contents. "Accordingly, having deposited their garbage 'in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it,' [an individual] could have had no reasonable expectation of privacy in the inculpatory items that they discarded." *Id.* at 40-41. (internal citation omitted).
- 3) **There May Be An Expectation of Privacy in Garbage Located Within the Curtilage of a Home.** When garbage is located outside a home, but still within the home's curtilage, a different issue than that addressed in [Greenwood](#) is presented.

- a) **There is No Bright-Line Rule That Garbage of Curtilage is Protected By the Fourth Amendment.** Initially, it should be noted that there is no "bright-line" rule that garbage located within the curtilage of a home is protected by the Fourth Amendment. See [United States v. Shanks](#), 97 F.3d 977, 979 (7th Cir. 1996), cert. denied, 519 U.S. 1135 (1997)(In discussing issue of garbage located on curtilage, court noted, "mere intonation of curtilage does not end the inquiry"); [United States v. Long](#), 176 F.3d 1304, 1308 (10th Cir.), cert. denied, 528 U.S. 921 (1999) ("Whether the officers violated the Fourth Amendment does not depend solely on curtilage. Defendant must still show that he had a reasonable expectation of privacy in the trash bags"). Instead, when analyzing these types of situations, courts typically look at the "public access" to the garbage to determine whether the warrantless search and seizure of garbage complies with the Fourth Amendment. See, e.g., [United States v. Comeaux](#), 955 F.2d 586, 589 (8th Cir.), cert. denied, 506 U.S. 845 (1992)("We believe that the 'proper focus under [Greenwood](#) is whether the garbage was readily accessible to the public so as to render any expectation of privacy objectively unreasonable") (citation omitted).
- b) **Generally, a Person's Reasonable Expectation of Privacy Increases the Closer the Garbage is to the Home.** As a general rule, an individual's reasonable expectation of privacy "will increase as the garbage gets closer to the garage or house." [United States v. Hedrick](#), 922 F.2d 396, 400 (7th Cir.), cert. denied, 502 U.S. 847 (1991). Thus, "garbage bags close to home – in a garage waiting to be set out by the curbside, within the curtilage, or in a back porch – can engender privacy expectations." [Certain Real Property Located at 987 Fisher Road](#), 719 F. Supp. at 1404. See also [Hedrick](#), 922 F.2d at 400 ("Garbage cans placed next to the house or the garage are not so accessible to the public that any privacy expectations are objectively unreasonable").

c) **“Readily Accessible” Garbage May Not Be Protected, Even Though Within the Home’s Curtilage.** Alternatively, “where ... the garbage is readily accessible from the street or other public thoroughfares, an expectation of privacy may be objectively unreasonable because of the common practice of scavengers, snoops, and other members of the public in sorting through garbage.” [Hedrick](#), 922 F.2d at 400. In such cases, the garbage may be seized without a warrant even though a technical trespass onto the curtilage has ensued. See, e.g., [Kramer](#), 711 F.2d at 794 (Seizure of garbage permissible even though “it was necessary for the police to trespass a few feet upon the outer edge of his front yard either by reaching across the fence into the air space above the yard or by stepping across the fence onto the yard”); [Hedrick](#), 922 F.2d at 400 (Court held garbage was “readily accessible to public” and seizure was permissible even though located on defendant’s curtilage because “distance between the garbage cans and the public sidewalk was relatively short, the garbage was collected by the garbage service from that location, and the garbage cans were clearly visible from the sidewalk”); [Shanks](#), 97 F.3d at 980 (Seizure of garbage from curtilage permissible where “garbage cans ... were readily accessible and visible from a public thoroughfare, the alley, and because it is common for scavengers to snoop through garbage cans found in such alleys”); [Comeaux](#), 955 F.2d at 589 (Seizure of garbage from curtilage permissible where garbage “was readily accessible to the public”); [Certain Real Property Located at 987 Fisher Road](#), 719 F. Supp. at 1404 (Seizure of garbage impermissible where garbage was located “against the back wall of the house, hidden from view of ordinary pedestrians passing by the front of the house”).

i. **Canine Sniffs.** The use of a canine to sniff a container, such as luggage, located in a public place, does not intrude upon a reasonable expectation of privacy and is not considered a “search” for purposes of the Fourth Amendment. See [United States v. Place](#), 462 U.S. 696, 707 (1983); [Illinois v. Caballes](#), ___ U.S. ___, 125 S. Ct. 834, 848 (2005) (“A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment”). While “a passenger has a reasonable expectation of privacy that the contents of his luggage will not be exposed absent consent or a search warrant,” the passenger’s reasonable expectation of privacy “does not extend to the airspace around the luggage.” [United States v. Daniel](#), 982 F.2d 146, 150-151 (5th Cir. 1993)(internal citation and quote omitted). See also [United States v. Gant](#), 112 F.3d 239, 241 (6th Cir. 1997)(Noting “a passenger on a common carrier has no reasonable expectation of privacy in the exterior of his luggage or the airspace surrounding it”).

- j. **Sensory Enhancements.** The lawfulness of using devices to enhance a law enforcement officer's senses generally turns upon (1) the sophistication of the device, and (2) whether the activity that was viewed occurred in public or in private. See [Kyllo v. United States](#), 533 U.S. 27, 34 (2001) ("We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area,' constitutes a search - at least where (as here) the technology in question is not in general public use")(internal citation omitted). Some specific examples of traditional devices are listed below.
- 1) **Binoculars and Telescopes.** As a general rule, the use of binoculars and telescopes to observe public conduct does not turn the surveillance into a search. See, e.g., [United States v. Lace](#), 669 F.2d 46, 51 (2d Cir.), cert. denied, 459 U.S. 854 (1982); [United States v. Allen](#), 633 F.2d 1282, 1290-91 (9th Cir. 1980); [United States v. Minton](#), 488 F.2d 37, 38 (4th Cir. 1973), cert. denied, 416 U.S. 936 (1974). However, where the conduct being observed is taking place inside a person's residence, "the use of vision enhancing devices can taint an otherwise valid surveillance of the interior of a home when the devices allow the observer to view not only activities the homeowner should realize might be seen by unenhanced viewing but also the details of activities the homeowner legitimately expects will not be observed." [United States v. Whaley](#), 779 F.2d 585, 591 (11th Cir. 1986), cert. denied, 479 U.S. 1055 (1987). See also [United States v. Taborda](#), 635 F.2d 131, 138-139 (2d Cir. 1980)("The vice of telescopic viewing into the interior of a home is that it risks observation not only of what the householder should realize might be seen by unenhanced viewing, but also of intimate details of a person's private life, which he legitimately expects will not be observed either by naked eye or enhanced vision").
 - 2) **Flashlights and Searchlights.** The use of flashlights and searchlights for illumination does not constitute a search. See [United States v. Lee](#), 274 U.S. 559, 563 (1927)(Searchlight); [Texas v. Brown](#), 460 U.S. 730, 740 (1983)(In upholding use of flashlight, Court noted, "numerous other courts have agreed that the use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection").
 - 3) **Thermal Imaging.** In [Kyllo v. United States](#), 533 U.S. 27 (2001), the Supreme Court held that the use of thermal imaging to detect the heat emanating from a residence constituted a "search" under the Fourth Amendment. Because thermal imaging is a technology that is "not in general public use," to use this type of device to obtain information about the inside of a residence "that would previously have been unknowable without physical intrusion" without first obtaining a warrant violates the Fourth Amendment. *Id.* at 40, see also [United States v. Huggins](#), 299 F.3d 1039, 1044 n.5 (9th Cir.), cert. denied, 537 U.S. 1079 (2002) ("the quantum of probable cause necessary to justify a thermal imaging search does not differ from that necessary to justify a physical search.")

- 4) **Aerial Surveillance.** The use of overflights to detect criminal activity is common in law enforcement. When conducting overflights, law enforcement officers may operate in navigable airspace to the same extent that a private person could. In such situations, “the Fourth Amendment ... does not require the police traveling in the public airways ... altitude to obtain a warrant in order to observe what is visible to the naked eye.” [California v. Ciraolo](#), 476 U.S. 207, 215 (1986). See also [Florida v. Riley](#), 488 U.S. 445, 451 (1989)(Where observations were made by helicopter, viewing was lawful, in that “any member of the public could legally have been flying over Riley’s property in a helicopter at the altitude of 400 feet and could have observed Riley’s greenhouse”).
- a) **Title 49 U.S.C. § 40103.** Section 40103 of Title 49 recognizes that “a citizen of the United States has a public right of transit through the navigable airspace.”
- b) **14 C.F.R. 91.119.** Section 91.119 provides the minimum safe altitudes for operation of aircraft, including helicopters. These regulations define where the public may operate in airspace, which further define where a law enforcement officer may go during an overflight.
- (1) **Fixed-Wing Aircraft (Congested Areas).** Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of **1,000 feet** above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.
- (2) **Fixed-Wing Aircraft (Uncongested Areas).** An altitude of **500 feet** above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.
- (3) **Helicopters.** Helicopters may be operated at less than the minimums prescribed above for fixed-wing aircraft, if the operation is conducted without hazard to persons or property on the surface.
- k. **Mail.** “It has long been held that first-class mail such as letters and sealed packages subject to letter postage – as distinguished from newspapers, magazines, pamphlets, and other printed matter - is free from inspection by postal authorities, except in the manner provided by the Fourth Amendment.” [United States v. Van Leeuwen](#), 397 U.S. 249, 251 (1970). See also [Jacobsen](#), 466 U.S. at 114. (“Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable”); [United States v. Ganser](#), 315 F.3d 839, 842-43 (7th Cir. 2003)(“Individuals have a Fourth Amendment right to be free from unreasonable searches and seizures of items they place in the mail”)(citations omitted).
- 1) **First-Class Mail.** First-class mail is protected by [Title 39 U.S.C. § 3623\(d\)](#), which provides:

The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. **No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.**

- 2) **First-Class Mail – Defined.** First-Class Mail includes all personal correspondence, all bills and statements of accounts, all matter sealed or otherwise closed against inspection, and matter wholly or partly in writing or typewriting.
- 3) **Mail Other Than First-Class.** In cases involving mail other than first-class mail, a law enforcement officer seeking to search the contents must comply with Postal Regulations.
- 4) **Detention of Mail.** Like the detention of any other “container,” mail may be detained only upon a showing of reasonable suspicion. See [Van Leeuwen](#), 397 U.S. at 252-253. See also [Ganser](#), 315 F.3d at 843 (holding that “upon reasonable suspicion that the package contains contraband, law enforcement authorities may detain the package for a reasonable length of time while investigating the package”) (citation omitted).
- 5) **No Expectation of Privacy in the Outside of Mail.** “There is no reasonable expectation of privacy with regard to the outside of a letter.” [United States v. DePoli](#), 628 F.2d 779, 786 (2d Cir. 1980)[citing [United States v. Leonard](#), 524 F.2d 1076, 1087 (2d Cir. 1975), cert. denied, 425 U.S. 958 (1976). See also [United States v. Hinton](#), 222 F.3d 664, 675 (9th Cir.), cert. denied, 529 U.S. 1056 (2000)] (“There is no expectation of privacy in the addresses on a package, regardless of its class”); [United States v. Huie](#), 593 F.2d 14, 15 (5th Cir. 1979); [United States v. Choate](#), 576 F.2d 165, 182 (9th Cir.), cert. denied, 439 U.S. 953 (1978)].
- 6) **Mail “Covers” or “Watches.”** “[Title 39, Section 233.3](#) of the Code of Federal Regulations, regulates the use of ‘mail covers.’” [Hinton](#), 222 F.3d at 674. In sum, a mail “cover” or “watch” simply “entails asking the post office to specifically watch for a particular address and, if anything comes in for that address, to pull it out of the mail stream and notify the postal inspectors. The postal inspectors then decide whether to pursue anything further or simply return it to the mail stream.” [United States v. Glover](#), 104 F.3d 1570, 1575 n.1 (10th Cir. 1997). This type of investigative tool has repeatedly been found valid under the Fourth Amendment, so long as the mail isn’t detained for an unreasonable amount of time. See, e.g., [Lustiger v. United States](#), 386 F.2d 132, 139 (9th Cir. 1967), cert. denied, 390 U.S. 951 (1968)] (“The Fourth Amendment does not preclude postal inspectors from copying information contained on the outside of sealed envelopes in the mail, where no substantial delay in the delivery of the mail is involved”).

NOTE: Where a law enforcement officer violates the postal regulations regarding “mail covers,” it will typically not result in suppression of any evidence that is obtained as a result of the violation. As one court has noted: “Suppression is not the appropriate remedy for a failure to follow agency regulations.” [Hinton](#), 222 F.3d at 674.

C. EPO #3: IDENTIFY APPROPRIATE ACTIONS THAT MAY BE TAKEN WHEN REASONABLE SUSPICION EXISTS

1. **General Rule - “Unreasonable Seizures” Are Forbidden.** As noted previously, “the Fourth Amendment forbids searches and seizures that are unreasonable.” [Terry v. Ohio](#), 392 U.S. 1, 9 (1968). Of course, not all personal interactions between law enforcement officers and citizens involve “seizures” of persons under the Fourth Amendment. [Florida v. Bostick](#), 501 U.S. 429, 434 (1991)(citation omitted). For example, some encounters are purely consensual. In these situations, “the encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.” [Id.](#) See also [Brower v. County of Inyo](#), 489 U.S. 593, 596 (1989) and [Terry](#), 392 U.S. at 19 n.16. For that reason, it is important for a law enforcement officer to understand exactly when an individual is “seized” for purposes of the Fourth Amendment.
2. **When is a Person “Seized” Under the Fourth Amendment?** Generally speaking, a person is seized under the Fourth Amendment when, based on the totality of the circumstances, a reasonable person would not feel free to leave or otherwise terminate the encounter based upon a law enforcement officer’s application of physical force (however slight) or show of authority. [California v. Hodari](#), 499 U.S. 621 (1991); [Brower v. County of Inyo](#), 489 U.S. 593 (1989); [Michigan v. Chesternut](#), 486 U.S. 567 (1988); and [Florida v. Bostick](#), 501 U.S. 429 (1991); [United States v. Brown](#), 410 F.3d 588, 594 (4th Cir. 2005)(“We are mindful of the general rule that a seizure ‘requires either physical force ... or, where that is absent, submission to the assertion of authority’”)(citation omitted); [United States v. Spence](#), 397 F.3d 1280, 1283 (10th Cir. 2005) (“A seizure occurs only when an officer, by means of physical force or show of authority, in some way restrains the liberty of a citizen”).

NOTE: “The Supreme Court has formulated two approaches for determining whether a person has been ‘seized’ within the meaning of the Fourth Amendment.” [United States v. Jerez](#), 108 F.3d 684, 689 (7th Cir. 1997). “The first of these approaches is employed when the police approach an individual in a place such as an airport, train terminal or on the street,” [id.](#), and is discussed above. “The second approach articulated by the Supreme Court applies when the police approach an individual in a confined space such as a bus.” [Id.](#) The Supreme Court has repeatedly discussed the seizure of persons in the context of encounters that occur on buses. See, e.g., [Bostick](#), *supra*. In these situations, “the traditional rule, which states that a seizure does not occur so long as a reasonable person would feel free ‘to disregard the police and go about his business,’ is not an accurate measure of the coercive effect of a bus encounter. A passenger may not want to get off a bus if there is a risk it will depart before the opportunity to reboard. A bus rider’s movements are confined in this sense, but this is the natural result of choosing to take the bus; it says nothing about whether the police conduct is coercive.” [United States v. Drayton](#), 536 U.S. 194, 201-02 (2002) (citation omitted). Instead, in a “bus encounter” type situation, “[t]he proper inquiry ‘is whether a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.’” [Id.](#) at 202 (citation omitted). At least one court has extended this rule to cover contacts that occur between police officers and motel occupants. See [Jerez](#), 108 F.3d at 689-90.

3. **When is Property “Seized” Under the Fourth Amendment?** Alternatively, “a ‘seizure’ of property occurs when there is some meaningful interference with an individual's possessory interests in that property.” [Jacobsen](#), 466 U.S. at 113 (footnote omitted).

NOTE: When law enforcement officers move a person's property, a question arises as to how far they can go before a “seizure” of the property occurs. [United States v. Gomez](#), 312 F.3d 920, 923-24 (8th Cir. 2002) (finding “minimal interference with Gomez's possessory interest” and holding no seizure occurred when a drug interdiction officer at a U.S. Postal Service facility moved a package to a command center twenty yards from a conveyor belt in a sorting area); [United States v. Harvey](#), 961 F.2d 1361, 1363-64 (8th Cir. 1992) (holding no seizure occurred when police removed luggage from a bus's overhead luggage compartment to the aisle below to subject the luggage to a drug-sniffing dog). “[C]ourts must focus on three factors when considering whether law enforcement's interference with checked luggage constitutes a seizure. First, did law enforcement's detention of the checked luggage delay a passenger's travel or significantly impact the passenger's freedom of movement? Second, did law enforcement's detention of the checked luggage delay its timely delivery? Third, did law enforcement's detention of the checked luggage deprive the carrier of its custody of the checked luggage? If none of these factors is satisfied, then no [Fourth Amendment](#) seizure has occurred. Conversely, if even a single factor is satisfied, then a [Fourth Amendment](#) seizure has occurred.” [United States v. Va Lerie](#), 424 F.3d 694, 707 (8th Cir. 2005). “We conclude the NSP's removal of Va Lerie's checked luggage from the bus to a room inside the terminal to seek consent to search did not constitute a meaningful interference with Va Lerie's possessory interests in his luggage. Therefore, no [Fourth Amendment](#) seizure occurred.” [Id.](#) at 708.

4. **There are Three Basic Types of Police-Citizen Encounters.** The Supreme Court has recognized three distinct types of police-citizen encounters. [United States v. Weaver](#), 282 F.3d 302, 309 (4th Cir.), [cert. denied](#), 537 U.S. 847 (2002).
- a. **One Type of Encounter is a Voluntary Contact.** These are brief, voluntary encounters between law enforcement officers and citizens that require neither probable cause nor reasonable suspicion. See [Florida v. Bostick](#), 501 U.S. 429, 434 (1991). A voluntary contact **IS NOT** considered a seizure for purposes of the Fourth Amendment. See, e.g., [United States v. Esparza-Mendoza](#), 386 F.3d 953, 957 (10th Cir. 2004) (Noting “the Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation”); [United States v. Moore](#), 375 F.3d 580, 584 (7th Cir. 2004) (“[I]t is well settled that a consensual encounter between an individual and a law enforcement official does not trigger Fourth Amendment scrutiny”).

- b. **A Second Type of Encounter is an Investigative Detention.** “Generally, ‘the Fourth Amendment ... prohibits state actors from making searches or seizures in the absence of probable cause.’” [United States v. Heard](#), 367 F.3d 1275, 1278 (11th Cir. 2004)[citing [United States v. Dunn](#), 345 F.3d 1285, 1288 (11th Cir. 2003)]. However, the Supreme Court has “announced an exception to the probable cause requirement: minimally intrusive searches and seizures of the person are permissible when a law enforcement officer has an objectively **reasonable suspicion** that ‘criminal activity may be afoot.’” [Id.](#) at 1289 (emphasis added). Sometimes referred to as “[Terry Stops](#),” these are brief investigatory stops that must be supported by reasonable, articulable suspicion. [Terry v. Ohio](#), 392 U.S. 1 (1968). An investigative detention is considered a seizure for purposes of the Fourth Amendment, although it does not rise to the level of an arrest. See, e.g., [United States v. Acosta](#), 363 F.3d 1141, 1145-46 (11th Cir. 2004)(“There is a difference between an investigative stop of limited duration for which reasonable suspicion is enough, and a detention that amounts to an arrest for which probable cause is required”); [United States v. Bentley](#), 29 F.3d 1073, 1075 (6th Cir.), [cert. denied](#), 513 U.S. 1028 (1994)(Noting that, “where a law enforcement officer lacks probable cause, but possesses a reasonable and articulable suspicion that a person has been involved in criminal activity, he may detain the suspect briefly to investigate the suspicious circumstances”).
- c. **A Third Type of Encounter is an Arrest.** An individual may be arrested upon a law enforcement officer establishing probable cause that a crime has been committed. [Brown v. Illinois](#), 422 U.S. 590 (1975). An arrest is considered a seizure for purposes of the Fourth Amendment.
- See also [United States v. Johnson](#), 384 F.3d 1185, 1188 (10th Cir. 2004)(Noting that “police-citizen encounters come in three varieties. The first involves the voluntary cooperation of a citizen in response to non-coercive questioning. The second is a [Terry v. Ohio](#) stop, involving only a brief, non-intrusive detention and frisk for weapons when officers have a reasonable suspicion that the defendant has committed a crime or is about to do so. The third encounter is the arrest of the defendant”)(citation omitted).
5. **Seizures That Begin Lawfully May Turn Unlawful.** “[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” [Caballes](#), 125 S. Ct. at 837. So, for example, a “seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” [Id.](#)

6. **Voluntary Contacts.** In [Florida v. Royer](#), 460 U.S. 491, 497 (1983)(plurality opinion), the Supreme Court noted, "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." These types of encounters are typically referred to as "voluntary contacts" or "consensual encounters." See, e.g., [Esparza-Mendoza](#), 386 F.3d at 957 ("An encounter is consensual if the defendant is free to leave at any time during the encounter"); [United States v. Manjarrez](#), 348 F.3d 881, 885-86 (10th Cir. 2003)("An encounter is consensual when a reasonable person would believe he was free to leave or disregard the officer's request for information. A consensual encounter is a voluntary exchange between the officer and the citizen in which the officer may ask non-coercive questions")*[citing United States v. West*, 219 F.3d 1171, 1176 (10th Cir. 2000)].
- a. **No Suspicion is Required for a Voluntary Contact.** As noted above, voluntary contacts require neither probable cause nor reasonable suspicion.
- b. **Permissible Actions During a Voluntary Contact.** When conducting a voluntary contact, a law enforcement officer may take the following actions without turning the contact into a "seizure" implicating the Fourth Amendment:
- 1) **Questioning.** A law enforcement officer may approach an individual and ask him or her questions, even incriminating questions, without turning the contact into a seizure. See [Texas v. Cobb](#), 532 U.S. 162, 171-72 (2001)(Noting "it is critical to recognize that the Constitution does not negate society's interest in the ability of police to talk to witnesses and suspects"); [Florida v. Rodriguez](#), 469 U.S. 1, 5-6 (1984); [INS v. Delgado](#), 466 U.S. 210, 216 (1984).
 - 2) **Identification.** A law enforcement officer may request, but not demand, to see an individual's identification without turning the contact into a seizure. See [Delgado](#), *supra*; [Royer](#), *supra*; [United States v. Campbell](#), 486 F.3d 949 (6th Cir. 2007) (reaffirming that interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure); [United States v. Mendenhall](#), 446 U.S. 544, 557-558 (1980); [United States v. Wade](#), 400 F.3d 1019, 1022 (7th Cir. 2005) (noting that "requests for identification do not imply a detention").
 - 3) **Display of Authority.** A law enforcement officer may identify himself and display his credentials during a voluntary contact. See [United States v. Polk](#), 97 F.3d 1096, 1098 (8th Cir. 1996); [United States v. Moreno](#), 897 F.2d 26, 30-31 (2d Cir.), *cert. denied*, 497 U.S. 1009 (1990).
 - 4) **Request for Consent to Search.** A law enforcement officer may seek consent for a search without turning the contact into a seizure. See [Royer](#), *supra*; [Bostick](#), *supra*; [United States v. Glass](#), 128 F.3d 1398, 1407 (10th Cir. 1997); [United States v. Peterson](#), 100 F.3d 7, 11 (2d Cir. 1996).

NOTE: Occasionally, students will suggest that any time an officer asks a person for consent to search, the person may feel intimidated to the extent that he does not feel “free to leave.” One court that addressed that contention did so as follows: “Even though consensual searches, and stops that fall short of seizures, do not implicate the Fourth Amendment, we recognize that there is a bit of intimidation involved anytime a police officer stops a person and asks for permission to conduct a search. The person to whom the request is directed might consider several possibilities. If he refuses, he may think the police will assume he's got something to hide and not allow him to leave. Although the former is probably true, he should know, assuming he didn't sleep through high school civics classes, that the latter proposition is not true. If he consents to the search, it might be because he has nothing to hide, or because he thinks a search will not find what he is concealing. Regardless of the thought processes someone who is asked to consent to a search might go through, we look to objective factors - whether a reasonable person would feel free to terminate the encounter.” [Wade](#), 400 F.3d at 1021-22 (internal citation omitted).

For more discussions of permissible actions during a voluntary encounter, see generally [United States v. Bryson](#), 110 F.3d 575, 579-80 (8th Cir. 1997); [United States v. Odum](#), 72 F.3d 1279, 1283 (7th Cir. 1995); [United States v. Travis](#), 62 F.3d 170, 173 (6th Cir. 1995), cert. denied, 516 U.S. 1060 (1996).

- c. **When Voluntary Contacts Become Investigative Stops.** While voluntary contacts may be made without any basis for suspecting an individual of wrongdoing, it should be remembered that “some contacts that start out as constitutional may ... at some unspecified point, cross the line and become an unconstitutional seizure.” [Weaver](#), 282 F.3d at 309. See also [United States v. Foster](#), 376 F.3d 577, 584 (6th Cir. 2004)(“A consensual encounter can ripen into a seizure if in light of all of the circumstances, a reasonable person would have believed that he or she was not free to walk away”)(citation and internal quotation marks and brackets omitted). For this reason, a law enforcement officer’s actions during a voluntary contact may be scrutinized to determine whether the encounter “somehow crossed the not-so-bright line and blossomed into an unconstitutional seizure.” *Id.* “No single factor will be dispositive in every case.” [Esparza-Mendoza](#), 386 F.3d at 959 (citation omitted). Among the factors courts will examine to determine whether a seizure has occurred are the following:

- 1) **Time, Place, and Purpose of the Encounter;** [United States v. Washington](#), 387 F.3d 1060, 1068 (9th Cir. 2004)(Factors to consider included “whether the encounter occurred in a public or non-public setting”); [United States v. Abdenbi](#), 361 F.3d 1281, 1291 (10th Cir. 2004)(Noting relevant factors to consider in whether consensual encounter became seizure include whether the “interaction” occurred “in a nonpublic or a small, enclosed space” in the “absence of other members of the public”)[citing [United States v. Sanchez](#), 89 F.3d 715, 718 (10th Cir. 1996)]; [United States v. Williams](#), 356 F.3d 1268, 1274 (10th Cir. 2004)(No seizure where “the encounter occurred in a relatively open space” and the defendant’s “path of egress ... was at no time impeded”); [United States v. Jefferson](#), 906 F.2d 346, 349 (8th Cir. 1990)(Noting that “courts have considered the time and setting of the encounter to be important factors in determining whether a seizure has occurred”); [United States v. Battista](#), 876 F.2d 201, 204 (D.C. Cir. 1989)(Among facts considered in deciding that seizure occurred were that defendant was “roused ... from his bed at 6:30 a.m. ... in some partial state of undress”); ++ [U.S. v. Lewis](#), 2010 U.S. App. LEXIS 10872 (4th Cir. 2010) (Voluntary contact of person sitting in driver’s seat of parked vehicle is permissible).
- 2) **Words Used By the Officer,** [Williams](#), 356 F.3d at 1274 (Noting “a consensual encounter between a citizen and police can be transformed into a seizure through persistent and accusatory questioning by police”); [United States v. Richardson](#), 385 F.3d 625, 629 (6th Cir. 2004)(“In determining whether a particular encounter between an officer and a citizen constitutes a seizure, we recognize that words alone may be enough to make a reasonable person feel that he would not be free to leave”).
- 3) **The Use of Language or Tone of Voice Indicating That Compliance With the Officer's Request Might Be Compelled,** [United States v. Drayton](#), 536 U.S. 194, 204 (2002)(Where officer spoke to bus passengers “one by one and in a polite, quiet voice,” without any commands or threats, no seizure occurred because nothing the officer said “would suggest to a reasonable person that he or she was barred from leaving the bus or otherwise terminating the encounter”); [Washington](#), 387 F.3d at 1068 (Factors to consider included “whether the officer’s officious or authoritative manner would imply that compliance would be compelled”); [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included the “use of aggressive language or tone of voice indicating that compliance with an officer’s request is compulsory”) (citation omitted); [United States v. Santos-Garcia](#), 313 F.3d 1073, 1078 (8th Cir. 2002)(No seizure occurred where, *inter alia*, “the tone of the entire exchange was cooperative”); [United States v. Guerrero](#), 472 F.3d 784, 789 (10th Cir. 2007) (listing a “commanding tone of voice indicating that compliance might be compelled” as evidence of a coercive show of authority);.

- 4) **Threatening Presence of Several Officers**, [Drayton](#), 536 U.S. at 204 (Where there was “no overwhelming show of force,” no seizure occurred); [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included “the threatening presence of several officers”)(citation omitted); [Washington](#), 387 F.3d at 1068 (Factors to consider included “the number of officers” present); [Guerrero](#), 472 F.3d at 789 (same).
- 5) **Display of Weapons**, [Drayton](#), 536 U.S. at 204 (No seizure occurred where, *inter alia*, there was “no brandishing of weapons” by the officers); [Washington](#), 387 F.3d at 1068 (Factors in determining whether seizure occurred included whether weapons were displayed); [Williams](#), 356 F.3d at 1274 (No seizure where “[n]one of the officers were uniformed, nor did they at any time display a weapon”); [Santos-Garcia](#), 313 F.3d at 1078 (No seizure occurred where, *inter alia*, the officer “did not display a weapon”).
- 6) **Physical Touching of the Citizen**, [Drayton](#), 536 U.S. at 204 (No seizure occurred where, *inter alia*, “[t]here was no application of force”); [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included “some physical touching by an officer”) (citation omitted); [Guerrero](#), 472 F.3d at 789 (same).
- 7) **Retention of a Citizen’s Identification or Other Personal Property**, [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included the “prolonged retention of a person’s personal effects”) (citation omitted); [Weaver](#), 282 F.3d at 310 (“Most important, for our present purposes, numerous courts have noted that the retention of a citizen’s identification or other personal property or effects is highly material under the totality of the circumstances analysis”); [Santos-Garcia](#), 313 F.3d at 1078 (Noting defendant was “no longer seized within the meaning of the Fourth Amendment after [the officer] returned [his] identification and issued a warning ticket”).
- 8) **Requests to Accompany the Officer to the Police Station**, [Abdenbi](#), 361 F.3d at 1291 (Relevant factors in determining seizure included “a request to accompany the officer to the station”)(citation omitted).
- 9) **Whether the Individual Was Advised He Was Not Required to Cooperate**, [Washington](#), 387 F.3d at 1068 (Factors to consider included “whether the officers advised the detainee of his right to terminate the encounter”); [United States v. Little](#), 18 F.3d 1499, 1505 (10th Cir. 1994)(en banc).

See also [Mendenhall](#), 446 U.S. at 554; [Bostick](#), 501 U.S. at 437; [Chestnut](#), 486 U.S. at 571-76; [Kaupp v. Texas](#), 538 U.S. 626 (2003); [Wade](#), 400 F.3d at 1021-1023; [Spence](#), 397 F.3d at 1283.

NOTE: Within the context of a traffic stop, many circuits have established a “bright-line” rule regarding seizures and the detention of a person’s driver’s license. More specifically, “[i]n the context of a traffic stop, if an officer retains one’s driver’s license, the citizen would have to choose between the Scylla of consent to the encounter or the Charybdis of driving away and risk being cited for driving without a license.” [Weaver](#), 282 F.3d at 311. See, e.g., [United States v. Mendez](#), 118 F.3d 1426, 1430 (10th Cir. 1997)(Noting that the Tenth Circuit Court of Appeals “has consistently applied at least one bright-line rule: an officer must return a driver’s documentation before the detention can end”); [United States v. Chan-Jimenez](#), 125 F.3d 1324, 1326 (9th Cir. 1997)(“When a law enforcement official retains control of a person’s identification papers, such as vehicle registration documents or a driver’s license, longer than necessary to ascertain that everything is in order, and initiates further inquiry while holding on to the needed papers, a reasonable person would not feel free to depart”); [United States v. Winfrey](#), 915 F.2d 212, 216 (6th Cir. 1990), cert. denied, 498 U.S. 1039 (1991)(“We find that a reasonable person would conclude that Winfrey was seized for purposes of the fourth amendment when his driver’s license, automobile registration, and keys were retained by the officers and he was ordered to remain there until the DEA agents arrived.”).

7. **Investigative Detentions.** Prior to 1968, encounters between law enforcement officers and citizens were categorized either as voluntary contacts (with no suspicion necessary) or arrests (which required probable cause). In [Terry v. Ohio](#), 392 U.S. 1 (1968), the Supreme Court established the requisite standard for a third type of police-citizen encounter, known as an investigative detention (“[Terry Stop](#)”).
 - a. **Investigative Detentions Defined.** An “investigative detention” is a “brief, investigatory stop when a law enforcement officer has a reasonable, articulable suspicion that criminal activity is afoot.” [Terry](#), 392 U.S. at 30; [Illinois v. Wardlow](#), 528 U.S. 119, 123 (2000).
 - b. **Requirements for an Investigative Detention of a Person.** To conduct an investigative detention of a person, a law enforcement officer must meet two (2) requirements.
 - 1) **Reasonable Suspicion is Required for an Investigative Stop.** First, a law enforcement officer must have “reasonable suspicion” to conduct an investigative detention. An officer need not know with absolute certainty that a crime is in progress or being considered. See [Wardlow](#), 528 U.S. at 126 (“In allowing [investigatory] detentions, [Terry](#) accepts the risk that officers may stop innocent people”).

- a) **“Reasonable Suspicion” is a Lesser Standard Than “Probable Cause”**. This standard is “considerably less than proof of wrongdoing by a preponderance of the evidence,” [United States v. Sokolow](#), 490 U.S. 1, 7 (1989), and “is obviously less demanding than that for probable cause.” [United States v. Montoya de Hernandez](#), 473 U.S. 531, 541, 544 (1985). Nevertheless, the Fourth Amendment requires “some minimal level of objective justification.” [Sokolow](#), 490 U.S. at 7. Thus, a law enforcement officer “must be able to articulate something more than an inchoate and unparticularized suspicion or ‘hunch.’” [Terry](#), 392 U.S. at 27. Stated differently, “[w]hat [Terry](#) requires to satisfy the Fourth Amendment’s reasonable seizure standard is ... a rational reason (as opposed to a hunch) to suspect criminal activity.” [Bolton v. Taylor](#), 367 F.3d 5, 7 (1st Cir. 2004). Of course, “reasonable suspicion is not a ‘finely-tuned’ or bright-line standard; each case involving a determination of reasonable suspicion must be decided on its own facts.” [Ornelas v. United States](#), 517 U.S. 690, 696 (1996).
- b) **Courts Look at the “Totality of the Circumstances” to Determine if Reasonable Suspicion Exists**. “A court inquiring into the validity of a [Terry](#) stop must use a wide lens and survey the totality of the circumstances.” [United States v. Romain](#), 393 F.3d 63, 71 (1st Cir. 2004). That’s because, typically, “[a] determination of reasonable suspicion ... does not depend on any single factor” [United States v. Singh](#), 363 F.3d 347, 354 (4th Cir. 2004). Instead, to determine whether reasonable suspicion exists, courts “must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” [United States v. Arvizu](#), 534 U.S. 266, 273 (2002)(citation omitted). See also [Sokolow](#), 490 U.S. at 8; [United States v. Knox](#), 839 F.2d 283, 290 (6th Cir. 1988), cert. denied, 490 U.S. 1019 (1989) (Noting that, in order to conduct an investigation detention, “a pattern of suspicious behavior need only be recognizable by one ‘versed in the field of law enforcement’”).

NOTE: By utilizing a “totality of the circumstances” standard, law enforcement officers are allowed to “draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” [Arvizu](#), 534 U.S. at 273. See also [Bolton](#), 367 F.3d at 9 (Noting that “the law imputes to a trained policeman a measure of expertise, and an explainable suspicion can be based on an assemblage of clues viewed through the lens of the policeman’s training and experience”)(internal citation omitted); [United States v. Perkins](#), 363 F.3d 317, 321 (4th Cir. 2004)(Noting a “determination of reasonable suspicion must give due weight to common sense judgments reached by officers in light of their experience and training”). Of course, the Fourth Amendment still “requires police ‘to explain *why* the officer’s knowledge of particular criminal practices gives special significance to the apparently innocent facts observed.” [United States v. Logan](#), 362 F.3d 530, 533 (8th Cir. 2004)(emphasis in original)[citing [United States v. Johnson](#), 171 F.3d 601, 604 (8th Cir. 1999)].

- c) **Reasonable Suspicion Can Be Based Upon Completely Innocent Behavior.** “A reasonable suspicion of criminal activity may be formed by observing exclusively legal activity.” [United States v. Gordon](#), 231 F.3d 750, 754 (11th Cir. 2000), cert. denied, 531 U.S. 1200 (2001). See also [Wardlow](#), 528 U.S. at 125; [Terry](#), 392 U.S. at 22-23. “[T]he relevant inquiry is not whether particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of noncriminal acts.” [Sokolow](#), 490 U.S. at 10. Nevertheless, “conduct typical of a broad category of innocent people provides a weak basis for suspicion.” [United States v. Weaver](#), 966 F.2d 391, 394 (8th Cir.), cert. denied, 506 U.S. 1040 (1992).
- 2) **Generally, Criminal Activity Must Be Afoot to Justify an Investigative Detention.** Second, a law enforcement officer must reasonably suspect that “criminal activity is afoot.” In its most basic sense, this means that the officer must reasonably suspect that (1) a crime is about to be committed, [Terry, supra](#); (2) a crime is being committed, [Adams v. Williams](#), 407 U.S. 143 (1972); or (3) a crime has been committed, [United States v. Hensley](#), 469 U.S. 221 (1985). It should be remembered, however, that “[o]fficers are not required under [Terry](#) to have reasonable suspicion of ongoing illegal activity in order to make investigative stops. Indeed, the very point of [Terry](#) was to permit officers to take preventive action and conduct investigative stops before crimes are committed, based on what they view as suspicious - albeit even legal - activity.” [Perkins](#), 363 F.3d at 326.

NOTE: The Sixth Circuit categorically prohibits Terry stops based upon completed misdemeanors. [Gaddis v. Redford Twp.](#), 364 F.3d 763, 771, n.6 (6th Cir. 2004) (“Police may . . . make a stop when they have reasonable suspicion of a completed felony, though not of a mere completed misdemeanor.”) The Eighth, Ninth, and Tenth Circuits, which are the only other circuits to have ruled on the issue, hold that the reasonableness of a Terry stop for a completed misdemeanor depends upon the nature of the misdemeanor offense, with particular attention to the potential for ongoing or repeated danger (e.g., drunken and/or reckless driving), and any risk of escalation (e.g., disorderly conduct, assault, domestic violence). A Terry stop based on a completed misdemeanor is unreasonable when, within the totality of the circumstances, there is no public safety risk, and when alternative means to identify the suspect or achieve the investigative purpose of the stop are possible. [United States v. Grigg](#), 498 F.3d 1070, 1081-82 (9th Cir. 2007); [United States v. Hughes](#), 2008 U.S. App. LEXIS 4011 (8th Cir. 2008); [United States v. Moran](#), 503 F.3d 1135 (10th Cir. 2007).

c. **When Investigation Detentions Become Arrests.** While an investigative detention requires reasonable suspicion that criminal activity is afoot, an arrest requires probable cause that a crime is being, or has been, committed. The requirements for a valid arrest will be discussed more fully in other EPOs. However, it should be remembered that “an encounter that began as a permissible [Terry](#) stop may ... ripen[] into an arrest, which must be supported by probable cause” [United States v. Perea](#), 986 F.2d 633, 644 (2d Cir. 1993). “No mechanical checklist has been assembled to facilitate distinguishing between such investigative stops, on the one hand, and those detentions, on the other, which though not technical, formal arrests are the ‘equivalent of an arrest’ and therefore require probable cause.” [United States v. Quinn](#), 815 F.2d 153, 156 (1st Cir. 1987). See also [United States v. Sharpe](#), 470 U.S. 675, 685 (1985) (Noting the difficulties in “distinguishing an investigative stop from a *de facto* arrest”) (emphasis in original); [United States v. Acosta-Colon](#), 157 F.3d 9, 14 (1st Cir. 1998) (“There is no ‘litmus-paper test,’ ... to determine whether any particular mode of detention amounted to a *de facto* arrest”); [Washington v. Lambert](#), 98 F.3d 1181, 1185 (9th Cir. 1996) (“There is no bright-line rule to determine when an investigatory stop becomes an arrest”). However, where “the totality of circumstances indicates that an encounter has become too intrusive to be classified as an investigative detention, the encounter is a full-scale arrest, and the government must establish that the arrest is supported by probable cause.” [United States v. Hastamorir](#), 881 F.2d 1551, 1556 (11th Cir. 1989). In determining whether a *de facto* arrest occurred, courts will consider the following factors:

- 1) **The Purposes Behind the Stop/Nature of the Crime**, [United States v. Seelye](#), 815 F.2d 48, 50 (8th Cir. 1987); [United States v. McCarthy](#), 77 F.3d 522, 530 (1st Cir.), cert. denied, 519 U.S. 991 (1996) (citation omitted); [United States v. Virden](#), 488 F.3d 1317, 1321 (11th Cir. 2007);
- 2) **Whether the Police Diligently Sought to Carry Out the Purpose of the Stop**, [Sharpe](#), 470 U.S. at 686; [McCarthy](#), 77 F.3d at 530 (citation omitted); [United States v. Carter](#), 139 F.3d 424, 433 (4th Cir. 1998); [Virden](#), 488 at 1321;
- 3) **The Amount of Force Used By the Police**, [Perea](#), 986 F.2d at 645; [McCarthy](#), 77 F.3d at 530;
- 4) **The Need for Such Force**, [Perea](#), 986 F.2d at 645;
- 5) **Information Conveyed to the Detainee Concerning the Reasons For the Stop**, [McCarthy](#), 77 F.3d at 530; [Carter](#), 139 F.3d at 433 (Factors to consider included “whether the authorities made it absolutely clear that they planned to reunite the suspect and his possessions at some future time, and how they planned to do it”);
- 6) **The Extent to Which an Individual's Freedom of Movement was Restrained**, [Perea](#), 986 F.2d at 645; [Quinn](#), 815 F.2d at 157 n.2 (Noting that, “[w]hile restrictions on the freedom of movement is a factor to be taken into account in determining whether a person is under arrest, it alone is not sufficient to transform a [Terry](#) stop into a *de facto* arrest”) (emphasis in original); [McCarthy](#), 77 F.3d at 530 (Factors to consider in determining whether *de facto* arrest made include “the restrictions placed on his or her personal movement”);

- 7) **The Number of Agents/Officers and Police Cars Involved**, [Perea](#), 986 F.2d at 645; [Seelye](#), 815 F.2d at 50;
 - 8) **Whether the Target of the Stop Was Suspected of Being Armed**, [Perea](#), 986 F.2d at 645; [Seelye](#), 815 F.2d at 50;
 - 9) **The Duration and Intensity of the Stop**, [Perea](#), 986 F.2d at 645; [Carter](#), 139 F.3d at 433; [Virden](#), 488 at 1321;
 - 10) **Whether the Stop Was Unnecessarily Prolonged**, [Carter](#), 139 F.3d at 433;
 - 11) **The Physical Treatment of the Suspect, Including Whether or Not Handcuffs Were Used**, [Perea](#), 986 F.2d at 645;
 - 12) **Any Alternative Means By Which the Police Could Have Served the Purpose of the Stop**, [Seelye](#), 815 F.2d at 50 (Noting one factor to consider in whether stop rose to an arrest was “whether there was an opportunity for the officer to have made the stop in less threatening circumstances”);
 - 13) **The Time and Location of the Stop**, [United States v. Jones](#), 759 F.2d 633, 640 (8th Cir.), cert. denied, 474 U.S. 837 (1985);
 - 14) **The Strength of the Officer's Articulate, Objective Suspicions**, [Seelye](#), 815 F.2d at 50;
 - 15) **The Need for Immediate Action By the Officer**, [Seelye](#), 815 F.2d at 50;
 - 16) **The Presence or Lack of Suspicious Behavior or Movement By the Person Under Observation**, [Seelye](#), 815 F.2d at 50;
 - 17) **The Importance of the Governmental Interest Alleged to Justify the Intrusion**, [Carter](#), 139 F.3d at 433.
- d. **Personal Property May Be Detained on Reasonable Suspicion.** Where a law enforcement officer has reasonable suspicion that a piece of personal property, such as luggage, contains contraband or evidence of a crime, the property may be detained. See [United States v. Place](#), 462 U.S. 696, 706 (1983) (“We conclude that when an officer’s observations lead him reasonably to believe that a traveler is carrying luggage that contains narcotics, the principles of [Terry](#) and its progeny would permit the officer to detain the luggage briefly to investigate the circumstances that aroused his suspicion, provided that the investigative detention is properly limited in scope”); [United States v. Frost](#), 999 F.2d 737, 741 n.1 (3d Cir), cert. denied, 510 U.S. 1001 (1993) (Same); [United States v. McFarley](#), 991 F.2d 1188, 1192 (4th Cir), cert. denied, 510 U.S. 949 (1993)(Same).
- e. **Reasonable Suspicion May Be Established in a Variety of Ways.** “An officer who performs an investigatory stop ‘must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion.’” [United States v. Baskin](#), 410 F.3d 788, 792 (7th Cir. 2005) (citing [Terry](#), 392 U.S. at 21). Reasonable suspicion may be established in a variety of ways, including:

- 1) **An Officer's Personal Observations Can Establish Reasonable Suspicion.** A law enforcement officer's personal observations may form the basis for reasonable suspicion to conduct an investigative detention... [Terry](#), *supra*. A great deal of deference is given to the personal observations of a law enforcement officer. See, e.g., [United States v. Cortez](#), 449 U.S. 411, 418 (1981) ("A trained officer draws inferences and makes deductions - inferences and deductions that might well elude an untrained person"); [United States v. Jacob](#), 377 F.3d 573, 578 (6th Cir. 2004) (Reasonable suspicion established, in part, because officers observed defendant engage in countersurveillance); [United States v. Hurt](#), 376 F.3d 789, 792-93 (8th Cir. 2004) (Reasonable suspicion established by officer's "experience and training"); [United States v. Cervine](#), 347 F.3d 865, 867-68 (10th Cir. 2003) (Evidence of counter-surveillance supported reasonable suspicion).
- 2) **Reasonable Suspicion May Be Established Using Information Provided From Other Officers.** "Police officers are not limited to personal observations in conducting investigatory activities, and reasonable suspicion for a [Terry](#) stop may be based on information furnished by others." [Romain](#), 393 F.3d at 71. This concept is sometimes referred to as "collective knowledge." The collective knowledge doctrine applies when "an officer (or team of officers), with direct personal knowledge of *all* the facts necessary to give rise to reasonable suspicion or probable cause, directs or requests that another officer, not previously involved in the investigation, conduct a stop, search, or arrest." [United States v. Ramirez](#), 473 F.3d 1026, 1033 (9th Cir. 2007). See, e.g., [United States v. Barnes](#), 506 F.3d 58, 63 (1st Cir. 2007) ("reasonable suspicion can be imputed to the officer conducting a search if he acts in accordance with the direction of another officer who has reasonable suspicion"); [United States v. Hensley](#), 469 U.S. 221, 232 (1985) (Information justifying stop came from flyer issued by another jurisdiction); [United States v. Longmire](#), 761 F.2d 411, 419 (7th Cir. 1985) (Information came from a four-hour old radio bulletin); [United States v. Hinojos](#), 107 F.3d 765, 768 (10th Cir. 1997) ("Under the 'fellow officer' rule ... law enforcement officers may pool their information and ... reasonable suspicion is to be determined on the basis of the collective knowledge of all the officers involved"); and [United States v. Erwin](#), 155 F.3d 818, 822 (6th Cir. 1998), *cert. denied*, 525 U.S. 1123 (1999) ("A law enforcement officer is generally justified in stopping an individual and asking for identification when relying on information transmitted by a valid police bulletin").
- 3) **Reasonable Suspicion May Be Established Using Information Provided By a Third Party.** Information from a third party, such as a victim or witness, can provide the facts necessary to justify reasonable suspicion in the same way victim or witness information can be used to establish probable cause.

NOTE: When a police response is based upon information provided through a 911 emergency call, the degree of reliability of the caller who provided the information may be less than that typically required. “Not surprisingly, 911 calls are the predominant means of communicating emergency situations.” [United States v. Holloway](#), 290 F.3d 1331, 1339 (11th Cir. 2002), *cert. denied*, 537 U.S. 1161 (2003). See also [United States v. Richardson](#), 208 F.3d 626, 630 (7th Cir.), *cert. denied*, 531 U.S. 910 (2000) (“A 911 call is one of the most common - and universally recognized - means through which police and other emergency personnel learn that there is someone in a dangerous situation who urgently needs help”). And, because “it is reasonable to accommodate the public’s need for a prompt police response” to a 911 call, “an emergency 911 call is entitled to greater reliability than an anonymous tip concerning general criminality.” [Terry-Crespo](#), 356 F.3d 1170, 1176 (9th Cir. 2004). The Supreme Court recognized such a distinction between 911 calls that relate to “general” criminal activity and those made in response to emergencies in [Florida v. J.L.](#), 529 U.S. 266 (2000): “The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.” *Id.* at 273-74. “Thus, when an *emergency* is reported by an anonymous caller, the need for immediate action may outweigh the need to verify the reliability of the caller.” [Holloway](#), 290 F.3d at 1339 (emphasis in original). Similarly, “it is appropriate for police to conduct an investigative stop ‘when the victim of a street crime seeks immediate police aid and gives a description of the assailant.’” [United States v. Fisher](#), 364 F.3d 970, 973 (8th Cir. 2004)[*citing* [Adams v. Williams](#), 407 U.S. 143, 147 (1972)]. Finally, it should be noted that two circuit courts of appeal “have even held that a 911 call reporting a domestic emergency, without more, may be enough to support a warrantless search of a home.” [United States v. Brooks](#), 367 F.3d 1123, 1136 (9th Cir. 2004)[*citing* [Richardson](#), 208 F.3d at 630 (Determining that a 911 call where the caller identified himself and stated that the body of a woman who had been raped and murdered could be found in the basement of a particular address was enough to support a warrantless search under the exigent circumstances exception); [United States v. Cunningham](#), 133 F.3d 1070, 1072-73 (8th Cir.), *cert. denied*, 523 U.S. 1131 (1998)(Holding that a 911 call from a woman who identified herself and claimed that she was being held against her will justified a protective sweep of the dwelling)].

- 4) **Reasonable Suspicion May Be Established Using Information Provided By An Informant or Anonymous Source.** It is not uncommon for an informant or anonymous source to provide the information necessary to establish reasonable suspicion. While this is permissible, additional corroboration will generally be required in these instances before reasonable suspicion can be established.
 - a) **Reliability Depends on Quantity and Quality of Information.** The reliability of a tip provided by an informant depends on both the “quantity and quality” of the information provided by the source. [Alabama v. White](#), 496 U.S. 325, 330 (1990). Of course, it should be remembered that “[r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.” *Id.* at 330.
 - b) **Tips From Known Informants or Sources.** Tips from known informants or sources can be used to justify reasonable suspicion.

- (1) **Known Informants.** A tip from a confidential informant with an established track record may contain sufficient indicia of reliability that it establishes reasonable suspicion under the totality of the circumstances with little or no corroboration. See, e.g., [White](#), 496 U.S. at 330 (Court noted that in [Adams v. Williams](#), 407 U.S. 143 (1972), they “assumed that the unverified tip from the known informant might not have been reliable enough to establish probable cause, but nevertheless found it sufficiently reliable to justify a [Terry](#) stop”); [United States v. Woosley](#), 361 F.3d 924, 927 (6th Cir. 2004)(“[A]n affidavit including a tip from an informant that has been proven to be reliable may support a finding of probable cause [and reasonable suspicion] in the absence of any corroboration”)(citation omitted).
- (2) **Quasi-Anonymous Sources.** “While ‘a tip might be anonymous might be anonymous in some sense,’ it may have ‘certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action.” [Terry-Crespo](#), 356 F.3d at 1174 (citation omitted).
- c) **Tips From Anonymous Informants.** “Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated ... ‘an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity.’” [Florida v. J.L.](#), 529 U.S. 266, 270 (2000)(internal citations omitted). “A tipster who refuses to identify himself may simply be making up the story, perhaps trying to use the police to harass another citizen.” [United States v. Johnson](#), 364 F.3d 1185, 1190 (10th Cir. 2004). Accordingly, a tip from an anonymous source may be sufficient to establish reasonable suspicion, but must have some degree of reliability associated with its “assertion of illegality.” [J.L.](#), 529 U.S. at 272. See also [Romain](#), 393 F.3d at 71 (“An officer may rely upon an informant’s tip to establish reasonable suspicion only if the information carries “sufficient ‘indicia of reliability’” to warrant acting upon it. That determination entails an examination of all the circumstances bearing upon the tip itself and the tipster’s veracity, reliability, and basis of knowledge”). “If a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.” [White](#), 496 U.S. at 330. In determining whether an anonymous tip contains enough verifiable information to establish reasonable suspicion, courts rely upon the following types of factors:

- (1) **The Amount of Detail Provided By the Source.** *See, e.g.,* [United States v. Nelson](#), 284 F.3d 472, 480 (3rd Cir. 2002) (citation omitted)(Noting that “even though [a] tip [is] wholly anonymous, the details provided in the tip [may be] sufficiently particularized and accurate to reflect a ‘special familiarity’ with the subject of the information”); [Ganser](#), 315 F.3d at 843 (“In determining whether a tip has furnished ‘enough verifiable information to provide reasonable suspicion, courts examine [*inter alia*] the amount of information given”); [United States v. Gonzalez](#), 190 F.3d 668, 672 (5th Cir. 1999)(Among factors to be considered in determining whether tip establishes reasonable suspicion is “the specificity of the information contained in the tip or report”); [United States v. Wheat](#), 278 F.3d 722, 731 (8th Cir. 2001), *cert. denied*, 537 U.S. 850 (2002)(Discussing tip in context of a traffic stop, court noted “the anonymous tipster must provide a sufficient quantity of information”).
- (2) **Whether the Source Predicts Future Behavior.** *See, e.g.,* [White](#), 496 U.S. at 332 (Noting importance of source’s “ability to predict respondent’s future behavior, because it demonstrated inside information”); [Ganser](#), 315 F.3d at 843 (Where the anonymous source “accurately predicted future behavior,” this “demonstrate[ed] inside information and a special familiarity” with the suspect’s criminal activity); [United States v. Patterson](#), 340 F.3d 368, 371 (6th Cir. 2003) (Holding [Terry](#) stop impermissible in that “anonymous tip ... offered no reliable or meaningful information in support of reasonable suspicion because it was not specific enough as to a prediction of future unlawful activities”).

NOTE: As in many areas of Fourth Amendment jurisprudence, the Ninth Circuit Court of Appeals has crafted rules regarding a particular legal issue that are squarely in conflict with all other Federal courts. This continues to be true on the issue of establishing the reliability of anonymous tipsters, like those discussed in [White](#) and [J.L.](#) In [United States v. Morales](#), 252 F.3d 1070 (9th Cir. 2001), the Ninth Circuit held that three (3) requirements must be met “in order for an anonymous tip to serve as the basis for reasonable suspicion.” [Id.](#) at 1076. First, “the tip must include a ‘range of details’; second, the tip cannot simply describe easily observed facts and conditions, but must predict the suspect’s future movements; and third, the future movements must be corroborated by independent police observation.” [Id.](#) Thus, the Ninth Circuit *mandates* that an anonymous tip include predictive information before it can be used to establish reasonable suspicion. This is in conflict with the majority of circuit courts to have discussed the issue. Under the majority view, “[a] rigid rule demanding the presence of predictive information is ... unjustified,” and “would be wholly inconsistent with the flexible nature of reasonable suspicion analysis.” [Perkins](#), 363 F.3d at 325. *Accord* [Nelson](#), 284 F.3d at 483-84 (Noting that while “predictive information can demonstrate particularized knowledge [as required in [White](#) and [J.L.](#)], other aspects of the tip can reflect particularized knowledge as well”); [Wheat](#), 278 F.3d at 734 (Noting that “[White](#) did not create a rule *requiring* that a tip predict future action, and neither did [J.L.](#)”) (emphasis in original)(internal citation omitted); [United States v. Tucker](#), 305 F.3d 1193, 1201 (10th Cir. 2002), *cert. denied*, 537 U.S. 1223 (2003)(Noting that “while the police did not corroborate predictive details in the tip,” this “lack of corroboration is not fatal”).

- (3) **Whether and to What Extent the Police Corroborate the Source's Information.** See, e.g., [White](#), 496 U.S. at 331 (Court noted that, where "an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity"); [Perkins](#), 363 F.3d at 322 ("Before deciding to make an investigative stop, Officer Burdette confirmed important aspects of the tip. The fact that he found the two white males in a red car with a silver or white stripe at the precise duplex reported, just as the caller had corroborated, offers important corroboration of the tip"); [Ganser](#), 315 F.3d at 843 ("In determining whether a tip has furnished 'enough verifiable information to provide reasonable suspicion, courts examine [*inter alia*] ... the amount of police corroboration") (citation omitted) [Gonzalez](#), 190 F.3d at 672 (Among factors to be considered in determining whether tip establishes reasonable suspicion is "the extent to which the information in the tip or report can be verified by officers in the field").
- (4) **Whether the Information is Based Upon the Tipster's First-Hand Observations.** Where the information provided by the tipster is based upon his or her own first-hand observations, the tip is entitled to greater weight than might otherwise be the case. See, e.g., [Illinois v. Gates](#), 462 U.S. 213, 234 (1983) (Noting that informant's "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case"); [Perkins](#), 363 F.3d at 322 (Where the "tip itself made clear both that the caller was in close proximity to the duplex and that the caller had personally observed the men," the tipster's "contemporaneous viewing of the suspicious activity" served to "enhance the tip's reliability"); [United States v. Holmes](#), 360 F.3d 1339, 1343 (D.C. Cir. 2004) (Where informant "supplied the police with an eye-witness account of criminal activity" that was "based upon firsthand observation," tip was entitled to greater weight).

- (5) **Whether the Information Places the Anonymity of the Source in Jeopardy.** “If an informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip.” [J.L.](#), 529 U.S. at 276 (Kennedy, J., concurring). See also [Heard](#), 367 F.3d at 1279 (“The reliability of a tip is considered in light of all relevant circumstances, which include ... a consideration of whether the officer can track down the tipster again”); [Holmes](#), 360 F.3d at 1344 (Informant’s tip entitled to greater weight because informant “placed his anonymity at risk” by “subjecting himself to ready identification by the police”); [Terry-Crespo](#), 356 F.3d at 1176 (Reliability of an informant’s tip supported by fact that source “jeopardized any anonymity he might have had by calling 911 and providing his name to an operator during a recorded call”).

- (6) **Whether the Information Was Provided in a Face-to-Face Encounter.** Where a tip is provided to the police in a face-to-face encounter, courts typically consider the “report inherently more trustworthy.” [United States v. Thompson](#), 234 F.3d 725, 729 (D.C. Cir. 2000), cert. denied, 532 U.S. 1000 (2001). See also [Romain](#), 393 F.3d at 73 (“Unlike a faceless telephone communication from out of the blue, a face-to-face encounter can afford police the ability to assess many of the elements that are relevant to determining whether information is sufficiently reliable to warrant police action. A face-to-face encounter provides police officers the opportunity to perceive and evaluate personally an informant’s mannerisms, expressions, and tone of voice (and, thus, to assess the informant’s veracity more readily than could be done from a purely anonymous telephone tip). In-person communications also tend to be more reliable because, having revealed one’s physical appearance and location, the informant knows that she can be tracked down and held accountable if her assertions prove inaccurate. Finally, a face-to-face encounter often provides a window into an informant’s represented basis of knowledge; for example, her physical presence at or near the scene of the reported events can confirm that she acquired her information through first-hand observation”); [Heard](#), 367 F.3d at 1279 (“A face-to-face anonymous tip is presumed to be inherently more reliable than an anonymous telephone tip because the officers receiving the information have an opportunity to observe the demeanor and perceived credibility of the informant”); [United States v. Valentine](#), 232 F.3d 350, 354 (3d Cir. 2000), cert. denied, 532 U.S. 1014 (2001)(Noting “a tip given face to face is more reliable than an anonymous telephone call,” in that, “when an informant relates information to the police face to face, the officer has an opportunity to assess the informant’s credibility and demeanor”); [United States v. Christmas](#), 222 F.3d 141, 144 (4th Cir. 2000), cert. denied, 531 U.S. 1098 (2001)(Noting “face-to-face encounter[s] ... [do] did not pose this same credibility problem[s]” as do anonymous telephone tips); [United States v. Salazar](#), 945 F.2d 47, 50-51 (2d Cir. 1991), cert. denied, 504 U.S. 923 (1992)(Noting “a face-to-face informant must, as a general matter, be thought more reliable than an anonymous telephone tipster, for the former runs the greater risk that he may be held accountable if his information proves false”); [United States v. Sierra-Hernandez](#), 581 F.2d 760, 763 (9th Cir.), cert. denied, 439 U.S. 936 (1978) (“Unlike a person who makes an anonymous telephone call, this informant confronted the agent directly”).

- (7) **The Timeliness of the Source's Report.** See, e.g., [White](#), 407 U.S. at 147 (Noting that, “when the victim of a street crime seeks immediate police aid and gives a description of his assailant,” immediate action may be required); [Terry-Crespo](#), 356 F.3d at 1177 (Noting “police may ascribe greater reliability to a tip, even an anonymous one, where an informant ‘was reporting what he had observed moments ago,’ not stale or second-hand information”)(citations omitted); [Wheat](#), 278 F.3d at 731; [Thompson](#), 234 F.3d at 729 (Noting that “the recency and the proximity” of the tipster’s observation “suggested that it would prove accurate”); [Valentine](#), 232 F.3d at 354 (Noting “officers could expect that the informant had a reasonable basis for his beliefs,” in that “the officers ... knew that the informant was reporting what he had observed moments ago, not what he learned from stale or second-hand sources”); [Gonzalez](#), 190 F.3d at 672 (Among factors to be considered in determining whether tip establishes reasonable suspicion is “whether the tip or report concerns active or recent activity, or has instead gone stale”).
- (8) **Whether the Source Provided Information Concerning a Neighbor of or Someone Who Lived Close to the Source.** See, e.g., [Christmas](#), 222 F.3d at 144 (“By informing the police about her neighbors’ illegal activity, the informant exposed herself to the risk of reprisal. The fact that she provided the report to uniformed police officers in public only increased the probability that someone associated with the illegal activity would witness her aid to the police”); [Valentine](#), 232 F.3d at 354 (“[W]hen an informant gives the police information about a neighbor ... or someone nearby ... the informant is exposed to a risk of retaliation from the person named, making it less likely that the informant will lie”).

- f. **Various Factors Can Be Used to Justify Investigative Detentions.** Law enforcement officers can utilize a wide variety of factors to justify an investigative detention. “Acts that in isolation may be ‘innocent in itself’ or at least susceptible to an innocent interpretation, may collectively amount to reasonable suspicion.” [United States v. Nelson](#), 284 F.3d 472, 480 (3rd Cir. 2002)(citation omitted). Thus, entirely innocent conduct can, in appropriate instances, justify a [Terry](#) stop. See [Reid v. Georgia](#), 448 U.S. 438, 441 (1980)(per curiam)(“There could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot”); [United States v. Arvizu](#), 534 U.S. 266, 277-278 (2002) (“Undoubtedly, each of these factors alone is susceptible to innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for Stoddard’s stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment”). Some common factors used by officers to justify an investigative detention include:

- 1) **A Suspect's Nervousness is a Factor That Can Be Used to Justify an Investigative Stop.** A suspect's nervousness is a factor that can be considered in determining whether reasonable suspicion exists to support an investigative detention. See, e.g., [Illinois v. Wardlow](#), 528 U.S. 119, 124 (2000)(Noting that Court recognized "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion")(citations omitted); [United States v. Bloomfield](#), 40 F.3d 910 (8th Cir. 1994), cert. denied, 514 U.S. 1113 (1995)("Although it is customary for people to be 'somewhat nervous' when Roberts pulls them over, it is unusual for people to 'fidget' as Bloomfield did when the stop is a 'normal routine' traffic stop"); [United States v. Palomino](#), 100 F.3d 446 (6th Cir. 1996)(Noting "nervousness of a defendant is a factor which can lead to a finding of reasonable suspicion," although "nervousness alone is not a sufficient ground upon which to base a finding of reasonable suspicion"); [United States v. Jones](#), 269 F.3d 919, 928 (8th Cir. 2001)("Nervousness combined with several other more revealing facts can generate reasonable suspicion").

NOTE: Notwithstanding the above, a law enforcement officer should remember that, while nervousness is a pertinent factor a law enforcement officer could consider in determining if criminal activity was occurring, its value is limited, because "even innocent people can display some nervousness when being questioned by police." [Johnson](#), 364 F.3d at 1192. See, e.g., [United States v. Wood](#), 106 F.3d 942, 948 (10th Cir. 1997). (Reiterating that "nervousness is of limited significance in determining reasonable suspicion and that the government's repetitive reliance on ... nervousness ... as a basis for reasonable suspicion ... must be treated with caution"); [Jones](#), 269 F.3d at 928 (While acknowledging nervousness as a factor, emphasizing that "generally, however, 'nervousness is of limited significance in determining reasonable suspicion'" (citation omitted)).

- 2) **A Suspect's Criminal History Can Be Considered to Justify an Investigative Detention.** A suspect's criminal history may be utilized as a factor to justify an investigative detention, although standing alone it does not establish reasonable suspicion. See, e.g., [Perkins](#), 363 F.3d at ("Officer Burdette identified the passenger in the car as a known drug user who lived on Knox Avenue, which further reinforced his suspicions of possible drug activity"); [Wood](#), 106 F.3d at 949 (Cautioning that "prior criminal involvement alone is insufficient to give rise to the necessary reasonable suspicion to justify shifting the focus of an investigative detention from a traffic stop to a narcotics or weapons investigation. If the law were otherwise, any person with any sort of criminal record ... could be subjected to a [Terry](#)-type investigative stop by a law enforcement officer at any time without the need for any other justification at all")(citations omitted); [Palomino](#), 100 F.3d at 450 ("Investigation which revealed Palomino's past involvement in criminal activities" one factor justifying reasonable suspicion of criminal activity).
- 3) **Knowledge of Recent Criminal Conduct.** Where a law enforcement officer has "[k]nowledge of ... recent relevant criminal conduct," this knowledge "is a permissible component of the articulable suspicion required for a [Terry](#) stop." [United States v. Feliciano](#), 45 F.3d 1070, 1074 (7th Cir.), cert. denied, 516 U.S. 853 (1995).

- 4) **The Time and Location of a Situation are Factors That Can Be Considered in Determining Whether Reasonable Suspicion Exists.** The time and location of a given situation may be factors to consider in determining whether reasonable suspicion exists. See, e.g., [United States v. Lenoir](#), 318 F.3d 725, 729 (7th Cir.), cert. denied, ___ U.S. ___, 124 S. Ct. 110 (2003) (“Police observation of an individual, fitting a police dispatch description of a person involved in a disturbance, ***near in time and geographic location to the disturbance***, establishes a reasonable suspicion that the individual is the subject of the dispatch”)(emphasis added); [United States v. Edmonds](#), 240 F.3d 55, 60 (D.C. Cir. 2001)(Court noted that the defendant’s “presence in a van parked after hours in a school lot known to be the site of numerous drug transactions” contributed to finding of reasonable suspicion).
- 5) **A Suspect’s Flight Upon Observing Law Enforcement Officers Can Be Considered in Determining Whether Reasonable Suspicion Exists.** A suspect’s flight upon observing law enforcement officers may be considered in determining whether reasonable suspicion exists. See, e.g., [Illinois v. Wardlow](#), 528 U.S. 119, 124 (2000) (“Headlong flight - wherever it occurs - is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such”); [United States v. Bonner](#), 363 F.3d 213, 217 (3rd Cir. 2004)(Noting that, while the Supreme Court “has never held unprovoked flight alone is enough to justify a stop,” the Court has held, however, “that flight upon noticing police, plus some other indicia of wrongdoing, can constitute reasonable suspicion”).

NOTE: In [Bonner](#), *supra*, a vehicle was lawfully stopped by the police. Before the officers could approach, however, one of the passengers jumped out of the car and fled. The police gave chase and ultimately seized the passenger, who was found to have drugs on his person. The defendant alleged his seizure was unlawful because the only reason the police had to stop him was his flight. In rejecting this contention, the Third Circuit Court of Appeals held that “[f]light from a non-consensual, legitimate traffic stop (in which the officers are authorized to exert superintendence and control over the occupants of the car) gives rise to reasonable suspicion.” [Id.](#) at 218.

- 6) **A Suspect's Presence in a High Crime Area Can Be Considered.** A suspect's presence in a high crime area, when combined with other factors, can support reasonable suspicion. See, e.g., [Brown v. Texas](#), 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct"); [Wardlow](#), 528 U.S. at 124 ("An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime") (citation omitted); [Baskin](#), 401 F.3d 788, 793 (7th Cir. 2005) (Suspect's apparent flight, combined with his close proximity to "a newly discovered methamphetamine lab in an otherwise remote county park at a time when most people are asleep," justified [Terry](#) stop); [Bonner](#), 363 F.3d at 217 ("Mere presence in an area known for high crime does not give rise to reasonable suspicion for a stop"); [United States v. Mayo](#), 361 F.3d 802, 807 (4th Cir. 2004) ("Although standing alone this factor may not be the basis for reasonable suspicion to stop anyone in the area, it is a factor that may be considered along with others to determine whether police have a reasonable suspicion based on the totality of the circumstances") (internal citation omitted).
- 7) **A Suspect's Behavior May Be Considered.** See, e.g., [United States v. Maguire](#), 359 F.3d 71, 77 (1st Cir. 2004) (Reasonable suspicion existed, in part, based upon suspect's "disheveled" appearance, and responses to officers' questions that were "less than forthcoming" and provided while he was "walking away from the officers"); [United States v. McCarthy](#), 77 F.3d 522, 531 (1st Cir.), cert. denied, 519 U.S. 991 (1996) (Finding that providing vague and evasive responses to officers' questions is relevant in evaluating the propriety of a [Terry](#) stop).
- 8) **Profiles May Be Used to Support an Investigative Detention.** In [United States v. Sokolow](#), 490 U.S. 1, 10 (1989), the Supreme Court approved the use of a "drug courier profile" by federal agents. As noted by the Court: "A court sitting to determine the existence of reasonable suspicion must require the agent to articulate the factors leading to that conclusion, but the fact that these factors may be set forth in a 'profile' does not somehow detract from their evidentiary significance as seen by a trained agent." [Id.](#)

- g. **The Length of an Investigative Detention Must Be Reasonable.** "An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." [Florida v. Royer](#), 460 U.S. 491, 500 (1983). "The investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." [Id.](#) Furthermore, "it is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." [Id.](#) So, while a [Terry](#) stop "permits law enforcement to detain a person briefly in order to investigate the circumstances that provoke suspicion," [United States v. Brignoni-Ponce](#), 422 U.S. 873, 881 (1975), "when a law enforcement officer no longer has any reasonable suspicions of criminal activity, the detained individual is constitutionally free to leave." [Erwin](#), 155 F.3d at 823. If an investigative stop extends beyond its lawful duration, then a *de facto* arrest requiring probable cause has occurred.
- 1) **There is No Bright-Line Time Limit for Investigative Stops.** "There is no talismanic time beyond which any stop initially justified on the basis of [Terry](#) becomes an unreasonable seizure under the Fourth Amendment." [United States v. Davies](#), 768 F.2d 893, 901 (7th Cir.), *cert. denied*, 474 U.S. 1008 (1985). *See, e.g., United States v. Place*, 462 U.S. 696, 709-10 (1983)(Court declined to adopt any outside time limitation on a permissible [Terry](#) stop, but held that a ninety-minute detention of luggage was unreasonable based on all the facts); [United States v. Acosta](#), 363 F.3d 1141, 1147 (11th Cir. 2004)("There is no rigid time limitation or bright line rule regarding the permissible duration of a [Terry](#) stop")(citation omitted); [United States v. Vega](#), 72 F.3d 507, 514-16 (7th Cir. 1995)(Court upheld a sixty-two minute stop, citing the "objective reasonableness" of the officer's actions).
 - 2) **A Long Duration Does Not Automatically Mean an Arrest Has Occurred.** Thus, "a long duration ... does not by itself transform an otherwise valid stop into an arrest." [United States v. Owens](#), 167 F.3d 739, 749 (1st Cir.), *cert. denied*, 528 U.S. 894 (1999). Instead, courts must examine "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." [United States v. Sharpe](#), 470 U.S. 675, 686 (1985)(citations omitted). Thus, while "there is "no rigid time limitation on [Terry](#) stops," [id.](#) at 685, a stop may be too long if it involves "delay unnecessary to the legitimate investigation of the law enforcement officers," [Id.](#) at 687.

- 3) **Other Factors Must Be Considered in Determining Whether an Investigative Detention was of Lawful Duration.** “Time of detention cannot be the sole criteria for measuring the intrusiveness of the detention. Clearly, from the perspective of the detainee, other factors, including the force used to detain the individual, the restrictions placed on his or her personal movement, and the information conveyed to the detainee concerning the reasons for the stop and its impact on his or her rights, affect the nature and extent of the intrusion and, thus, should factor into the analysis.” [McCarthy](#), 77 F.3d at 530.

- h. **The Use of Force During an Investigative Detention Must Be Reasonable.** The Supreme Court “has long recognized that the right to make an ... investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” [Graham v. Connor](#), 490 U.S. 386, 396 (1989). “The ‘mere use ... of force in making a stop will not necessarily convert a stop into an arrest [When the] surrounding circumstances give rise to a justifiable fear for personal safety, a seizure effectuated with weapons drawn may properly be considered an investigative stop.’” [United States v. Heath](#), 259 F.3d 522, 530 (6th Cir. 2001). See also [United States v. Vargas](#), 369 F.3d 98, 102 (2d Cir. 2004)(“[A]lthough under ordinary circumstances, drawing weapons and using handcuffs are not part of a [Terry](#) stop, intrusive and aggressive police conduct’ is not an arrest ‘when it is a reasonable response to legitimate safety concerns on the part of the investigating officers’”(citation and internal brackets omitted); [United States v. Johnson](#), 364 F.3d 1185, 1194 (10th Cir. 2004)(“An officer may take reasonable precautions to protect his safety during an investigative detention”); [United States v. Fisher](#), 364 F.3d 970, 973 (8th Cir. 2004)(“It is well established ... that when officers are presented with serious danger in the course of carrying out an investigative detention, they may brandish weapons or even constrain the suspect with handcuffs in order to control the scene and protect their safety”); [United States v. Miles](#), 247 F.3d 1009, 1012 (9th Cir. 2001)(Noting that the court allows “intrusive and aggressive police conduct without deeming it an arrest ... when it is a reasonable response to legitimate safety concerns on the part of the investigating officers”); [United States v. Zapata](#), 18 F.3d 971, 976-77 (1st Cir. 1994) (Holding that slight physical touching cannot, on its own, produce a de facto arrest).

- 1) **Pointing of Guns.** "There is no per se rule that pointing guns at people ... constitutes an arrest." [Baker v. Monroe Township](#), 50 F.3d 1186, 1193 (3rd Cir. 1995). Instead, "the use of guns in connection with a stop is permissible where the police reasonably believe the weapons are necessary for their protection." [United States v. Perdue](#), 8 F.3d 1455, 1462 (10th Cir. 1993)(internal quotation marks, brackets, and citations omitted). See, e.g., [Maguire](#), 359 F.3d at 78 ("It is well established that the use or display of a weapon does not alone turn an investigatory stop into a de facto arrest")[\[citing United States v. Trueber](#), 238 F.3d 79, 94 (1st Cir. 2001)]; [United States v. Navarrete-Barron](#), 192 F.3d 786, 791 (8th Cir. 1999); [United States v. Alvarez](#), 899 F.2d 833, 838 (9th Cir. 1990), cert. denied, 498 U.S. 1024 (1991); [United States v. Taylor](#), 857 F.2d 210, 214 (4th Cir. 1988); [United States v. Serna-Barreto](#), 842 F.2d 965, 968 (7th Cir. 1988); [United States v. Jones](#), 759 F.2d 633, 638 (8th Cir.), cert. denied, 474 U.S. 837 (1985); [United States v. Roper](#), 702 F.2d 984, 987-88 (11th Cir. 1983); [United States v. Jackson](#), 652 F.2d 244, 249 (2d Cir.), cert. denied, 454 U.S. 1057 (1981).
- 2) **Use of Handcuffs.** "Nor does the use of handcuffs exceed the bounds of a [Terry](#) stop, so long as the circumstances warrant that precaution." [Houston v. Clark County Sheriff Deputy John Does 1-5](#), 174 F.3d 809, 815 (6th Cir. 1999). As one court has noted: "Because safety may require the police to freeze temporarily a potentially dangerous situation ... the use of handcuffs may be part of a reasonable [Terry](#) stop." [United States v. Merkley](#), 988 F.2d 1062, 1064 (10th Cir. 1993). See, e.g., [Navarette](#), 192 F.3d 791; [Perdue](#), 8 F.3d at 1463; [United States v. Esieke](#), 940 F.2d 29, 36 (2d Cir.), cert. denied, 502 U.S. 992 (1991); [United States v. Crittendon](#), 883 F.2d 326, 329 (4th Cir. 1989); [United States v. Hastamoris](#), 881 F.2d 1551, 1557 (11th Cir. 1989).
- 3) **When Does the Amount of Force Used Turn an Investigative Detention Into an Arrest?** In determining whether the amount of force used during an investigative detention has turned the stop into an arrest, courts consider a number of factors, including:
 - a) The number of officers and police cars involved;
 - b) The nature of the crime and whether there is reason to believe the suspect is armed;
 - c) The strength of the officer's articulable, objective suspicions;
 - d) The need for immediate action by the officer;
 - e) The presence or lack of suspicious behavior or movement by the person under observation;
 - f) Whether there was an opportunity for the officer to have made the stop in less threatening circumstances.[United States v. Thompson](#), 906 F.2d 1292, 1296 (8th Cir.), cert. denied, 498 U.S. 989 (1990).

- i. **A Suspect's Refusal to Cooperate May Not Be Used to Justify an Investigative Detention.** The Supreme Court has "consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." [Bostick](#), 501 U.S. at 437 [citing [INS v. Delgado](#), 466 U.S. 210, 216-217 (1984); [Royer](#), 460 U.S. at 498 (plurality opinion); [Brown v. Texas](#), 443 U.S. 47, 52-53 (1979)]; [Mayo](#), 361 F.3d at 806 (4th Cir. 2004)("A suspect's refusal to cooperate with police, without more, does not satisfy [Terry](#) stop requirements"); [United States v. Wood](#), 106 F.3d 942, 946 (10th Cir. 1997)("The failure to consent to a search cannot form any part of the basis for reasonable suspicion").
- j. **Police Officers May Require a Suspect to Identify Himself During an Investigative Detention.** The Supreme Court has long recognized the importance of determining a suspect's identity during a [Terry](#) stop. See, e.g., [Michigan v. Summers](#), 452 U.S. 692, 700 n.12 (1981)("It is clear that there are several investigative techniques which may be utilized effectively in the course of a [Terry](#)-type stop. The most common is interrogation, which may include both a request for identification and inquiry concerning the suspicious conduct of the person detained")(citation omitted)(emphasis added); [Adams v. Williams](#), 407 U.S. 143, 146 (1972)(Noting "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time")(emphasis added). Accordingly, where a suspect refuses during a valid [Terry](#) stop to provide his name, he may be arrested for that refusal under a state's "stop and identify" statute. [Hiibel v. Sixth Judicial District Court](#), 542 U.S. 177, 188 (2004)("A state law requiring a suspect to disclose his name in the course of a valid [Terry](#) stop is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures").
- k. **++ In some Circuits, police officers may also require passengers of a lawfully stopped car to identify themselves.** [U.S. v. Fernandez](#), 600 F.3d 56 (1st Cir. 2010). Fernandez was a passenger in a lawfully stopped car. The officer asked everyone for identification and discovered Fernandez had an active arrest warrant. A lawful frisk of Fernandez produced a gun. He was arrested and convicted of felon-in-possession. On appeal, he contended that the evidence was the fruit of an illegal request that he identify himself. The 1st Circuit [joining the 4th, 9th and 10th Circuits per The Informer] found the request lawful and affirmed the conviction: "Although the [Supreme] Court has not explicitly held that an inquiry into a passenger's identity is permissible, its precedent inevitably leads to that conclusion. The Court stated in *Hiibel* that '[o]btaining a suspect's name in the course of a Terry stop serves important government interests' because '[k]nowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder.' 542 U.S. at 186. To the extent a risk of violence may be tied to such background characteristics, the officer is equally vulnerable whether these characteristics apply to a driver or a passenger. Moreover, as we recently observed in rejecting a passenger's claim that inquiries into his identity unreasonably extended a traffic stop, the Supreme Court has allowed officers to, as a matter of course, take the arguably more intrusive step of ordering passengers out of a vehicle during a valid traffic stop without any individualized suspicion or justification. [United States v. Chaney](#), 584 F.3d 20, 26 (1st Cir.2009)."

8. **During an Investigative Detention, a Suspect May Be Patted-Down for Weapons in Certain Circumstances.** In [Terry](#), *supra*, the Supreme Court outlined the legal requirements for what has become known as a "[Terry](#) frisk." If, during an investigative detention, a law enforcement officer develops reasonable suspicion that the individual is presently armed and dangerous, the officer may conduct a limited pat-down search of the individual for weapons. However, "[a] [Terry](#) stop cannot be used as the basis of a 'full search' that would normally be warranted only by the existence of probable cause, consent, or a valid arrest." [United States v. Hardy](#), 855 F.2d 753, 759 (11th Cir. 1988), *cert. denied*, 489 U.S. 1019 (1989)(citation omitted).
- a. **[Terry](#) Frisk Defined.** A [Terry](#) frisk is a pat-down search of a suspect's outer clothing to discover weapons that could be used during an investigative stop. A law enforcement officer may not utilize a [Terry](#) frisk in an effort to look for evidence of a crime. See [Adams v. Williams](#), 407 U.S. 143, 146 (1972)("The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence"); [Minnesota v. Dickerson](#), 508 U.S. 366, 373 (1993)("If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under [Terry](#) and its fruits will be suppressed"). Nonetheless, if evidence is uncovered during valid [Terry](#) frisk for weapons, the evidence can be seized and used against the suspect. This concept will be discussed in the "Plain Touch" section, below.

NOTE: It should be noted that "[Terry](#) does not in terms limit a weapons search to a so-called 'pat-down' search. Any limited intrusion designed to discover guns, knives, clubs or other instruments of assault are permissible." [United States v. Reyes](#), 394 F.3d 219, 225 (5th Cir. 2003), *cert. denied*, 540 U.S. 1228 (2004) [citing [United States v. Hill](#), 545 F.2d 1191, 1193 (9th Cir. 1976)]. So, for example, "the raising of a suspect's shirt by a law enforcement officer does not violate the bounds established by [Terry](#)." [United States v. Jackson](#), 390 F.3d 393, 399 (5th Cir. 2004)(citation omitted), *vacated on other grounds*, 544 U.S. 917 (2005), nor "does directing a suspect to lift his shirt to permit an inspection for weapons." [Reyes](#), 349 F.3d at 225. See also [United States v. Edmonds](#), 1998 U.S. App. LEXIS 10807, at *11-12 (4th Cir.), *cert. denied*, 525 U.S. 912 (1998) (Officer's actions in directing suspect to lift shirt, then raising corner of suspect's baggy shirt after suspect refused to do so, "represented a sensible safety measure, while only minimally intruding on Edmonds' personal security"); [United States v. Baker](#), 78 F.3d 135, 138 (4th Cir. 1996), *cert. denied*, 522 U.S. 1051 (1998) ("Directing that he raise his shirt required little movement by Baker and allowed Officer Pope to immediately determine whether Baker was armed without having to come in close contact with him. And, it minimized the risk that he could draw his weapon before Officer Pope could attempt to neutralize the potential threat. ... Indeed, this act was less intrusive than the patdown frisk sanctioned in [Terry](#)"). The same rationale permits LEO, confronted with a suspect whose steerhide motorcycle jacket is sufficiently stiff and thick to conceal weapons hidden beneath from detection through a pat-down, to require the suspect to remove the jacket.

- b. **[An Officer Must Meet Two Requirements to Justify a Terry Frisk.](#)** In order to justify a [Terry](#) frisk, a law enforcement officer must demonstrate two things: *** First, that the suspect is lawfully stopped; and second, that he had reasonable suspicion the suspect was armed and dangerous.

- 1) **The First Requirement For a Terry Frisk is That the Suspect is Lawfully Stopped.** This requirement is ordinarily met when LEO reasonably suspect that the suspect has, is or is about to commit a crime. Generally, "policemen have no more right to 'pat down' the outer clothing of passers-by, or persons to whom they address casual questions, than does any other citizen." [Terry](#), 392 U.S. at 32 (Harlan, J., concurring). Instead, "[i]f the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a forcible stop. *Id.* See also [Adams](#), 407 U.S. at 146 ("***So long as the officer is entitled to make a forcible stop***, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose") (internal footnote and citation omitted) (emphasis added); [United States v. Burton](#), 228 F.3d 524, 528 (4th Cir. 2000) ("But an officer may not conduct this protective search for purposes of safety until he has a reasonable suspicion that supports the investigatory stop").
- 2) ***** But In the Special Context of a Vehicle Stop, This First Requirement Can Be Met for All Vehicle Occupants by the Lawful Stop of the Vehicle They Occupy.** [Arizona v. Johnson](#), 129 S. Ct. 781, 2009 U.S. LEXIS 868 (2009) approved the frisk of a passenger in a vehicle lawfully stopped to investigate an invalid license plate. Although there was no reason to suspect Johnson (one of the passengers) of a crime, one of the officers wanted to interview him. Reasonably suspecting that Johnson was armed and presently dangerous (a suspicion validated by the lower court following Supreme Court remand), the officer frisked Johnson and found an illegally possessed weapon. Citing the heightened concern for officer safety in vehicle stops and the Court's holding in [Brendlin v. California](#), 551 U.S. 249 (2007) ("For the duration of a traffic stop, we recently confirmed, a police officer effectively seizes 'everyone in the vehicle,' the driver and all passengers", [Johnson](#), 129 S.Ct at 784), the Supreme Court found the frisk lawful even though there was no reason to suspect Johnson of a crime.
- 3) **The Second Requirement For a Terry Frisk is That the Officer Have Reasonable Suspicion That a Suspect is Armed and Dangerous.** In order to conduct a [Terry](#) frisk, a law enforcement officer must also have reasonable suspicion that a suspect is presently armed and dangerous. As noted in [Terry](#), *supra*: "Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous ... he is entitled for the protection of himself and others in the area to conduct a carefully limited search...." [Terry](#), 392 U.S. at 30.

a) **++ Illustrative Case.** United States v. Burkett, 2010 U.S. App. LEXIS 14815, (9th Cir. 2010). Accused was convicted for felon-in-possession based on a gun found in his coat pocket during frisk. Accused was a front-seat passenger in a lawfully stopped vehicle. Affirming the conviction, the 5th Circuit observed: "Objectively viewed, Burkett's furtive movements during the time the [female] driver was refusing to comply with the order to stop her vehicle, his evasive and deceptive responses when asked what he was doing at that time, the peculiar way he opened the door with his left hand, and the way he kept his right hand near and reached for his right coat pocket when he got out of the vehicle, would justify an experienced law enforcement officer's [the trooper had nearly 22 years of LEO experience] belief that Burkett was armed and dangerous." This was buttressed by the trooper's observation immediately after the stop: "Once Trooper Blankenship turned on his spotlight, he could see a male passenger, later identified as Burkett, making "furtive movements" as the car continued to travel. Burkett leaned forward in his seat but kept his head rigid as if to make it appear that he was continuing to look forward and to disguise his movements. Nonetheless, the trooper could see the movement of Burkett's shoulders because the spotlight was reflecting off the white jacket he was wearing. It appeared that Burkett was either hiding or retrieving something from underneath the seat, an observation that heightened Trooper Blankenship's concerns."

- c. **A Terry Frisk is Limited to Those Areas Where a Weapon Could Be Located.** The frisk allowed by Terry, *supra* is limited in nature to looking in areas where weapons could be located. Terry, 392 U.S. at 229 ("The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer"); Adams, 407 U.S. at 146 ("The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law").
- d. **A Terry Frisk May Be Permissible Even Where the Suspect Has Been Handcuffed.** A Terry frisk of a suspect may be conducted even after the suspect has been restrained through the use of handcuffs. See, e.g., United States v. Sanders, 994 F.2d 200, 209-10 (5th Cir.), *cert. denied*, 510 U.S. 955, and *cert denied*, 510 U.S. 1014 (1993)(In upholding frisk of handcuffed suspect, court noted: "Sander's argument is entirely dependent on the assumption that, by handcuffing a suspect, the police instantly and completely eliminate all risks that the suspect will flee or do them harm. As is sadly borne out in the statistics for police officers killed and assaulted in the line of duty each year, however, this assumption has no basis in fact"); United States v. Holmes, 376 F.3d 270, 280 (4th Cir.), *cert. denied*, 543 U.S. 1011, 125 S. Ct. 633 (2004)(Frisk of vehicle upheld even though occupants had been removed and handcuffed based upon "the reasonable belief that the suspect [might] return to the vehicle following the conclusion of the Terry stop");

++ Wallets: Illustrative case. U.S. v Muhammad, 604 F.3d 1022 (8th Cir. 2010) Less than 2 hours after an armed robbery of a nearby credit union, Muhammad was detained because he matched the video of someone who had come into the credit union just before the robbery, ostensibly to use the restroom. He was detained along with his companion, who matched the video of the robber who came into the credit union and robbed it while Muhammad was still in the restroom. Both men were frisked. Muhammad had a hard wallet in his pocket. The agent pulled it from his pocket and found it plainly bulging with protruding cash. Withdrawing the cash, the officer matched some of the bills to bills stolen from the credit union. The trial court refused to suppress the evidence and convicted the accused. The 8th Circuit affirmed. Even if the frisker knew this 3" x 5" object was a wallet, it was big enough to contain "a dangerous weapon such as a small knife, box cutter or razor blade." Officers must generally "pull the suspicious object out and actually inspect it" to determine whether the object presents a safety concern. Under the circumstances [two men matching the video found nearby a credit union robbed 2 hours before, stolen cash, large amount of cash], the cash was plainly and immediately incriminating. The plain-view seizure doctrine justified taking it out of the wallet and examining it further [

NOTE: Students often ask whether a container may be opened during a "frisk," or if they are limited to simply feeling the outside of the bag for weapons. When the container is hard-sided (e.g., a briefcase), the answer to this question is obvious. Soft-sided containers may appear to present a more difficult question, but that doesn't seem to have originated. Useful on this point is United States v. Shranklen, 315 F.3d 959, 964 (8th Cir.), cert. denied sub nom. Fleming v. United States, 538 U.S. 971 (2003). There, officers opened a pouch found during a traffic stop of a vehicle. In finding that the officer "was not constitutionally required to pat down the pouch instead of opening it." id. at 963, in that "there is no guarantee that merely feeling the pouch would have led [the officer] to discover the weapon." id. at 964. The court continued: "For example, some type of padding could have enveloped the weapon, or the weapon could have been a pocketknife with an unexposed blade. It was therefore reasonable for [the officer] to open the pouch in order to inspect for weapons with his sense of sight and not solely with his sense of touch. We also note the resemblance here to Long, where police officers searched a car for weapons and found a pouch. Upon looking inside the pouch, the officers discovered it contained marijuana; the Supreme Court gave no indication that the officers should have patted down the pouch first." id. ++ See also, United States v. Muhammed, 604 F.3d 1022 (8th Cir. 2010) and above.

- e. **Establishing Reasonable Suspicion to Frisk a Suspect Can Be Established in a Variety of Ways.** As with investigative stops (see subparagraph (5)(c), above), law enforcement officers may establish reasonable suspicion that a suspect is presently armed and dangerous in a variety of different means, including:
- 1) **Personal Observations;**
 - 2) **Information From Other Officers;** and
 - 3) **Information From Third Parties.**

f. **Various Factors Can Be Used to Justify a Terry Frisk.** As with investigative stops, the list of factors that may be used as justification for a [Terry](#) frisk is extensive. “[T]he standard is whether the pat-down search is justified in the totality of circumstances, even if each individual indicator would not by itself justify the intrusion.” [United States v. Brown](#), 188 F.3d 860, 865 (7th Cir. 1999). The courts will consider the officer’s opinion, based on training and experience, as to whether certain facts and circumstances demonstrated a legitimate threat. [United States v. Rideau](#), 969 F.2d 1572, 1575 (“Trained, experienced officers. . . may perceive danger where an untrained observer would not.”) Among the most common factors used by law enforcement officers to justify a [Terry](#) frisk are the following:

- 1) **A Suspect’s Reputation May Be Considered.** “[R]easonable suspicion of a suspect’s dangerousness need not be based solely on activities observed by the police during or just before the relevant police encounter, but can be based on the suspect’s commission of violent crimes in the past - especially when those crimes indicate a high likelihood that the suspect will be ‘armed and dangerous’ when encountered in the future.” [Holmes](#), 376 F.3d at 278 (Upholding frisk based, in part, on officer’s knowledge “of the suspects’ criminal history *and* that the gang to which the suspects belonged was known to be armed”). Thus, where a suspect has a reputation for being armed and dangerous, such as through his past criminal history or association with violent gangs, a law enforcement officer can use this fact as justification for a [Terry](#) frisk. See, e.g., [United States v. Perrin](#), 45 F.3d 869, 873 (4th Cir.), *cert. denied*, 515 U.S. 1126 (1995) (Among factors justifying frisk of the defendant was his “violent criminal past”); [United States v. Strahan](#), 984 F.2d 155, 157 (6th Cir. 1993)([Terry](#) frisk justified, in part, because of “the defendant’s alleged membership in the Banditos motorcycle gang, a group whose members carry weapons”).
- 2) **A Bulge in the Suspect’s Clothing May Be Considered.** A bulge in a suspect’s clothing that could mean the presence of a weapon is a factor that law enforcement officers can use to justify a [Terry](#) frisk. [Pennsylvania v. Mimms](#), 434 U.S. 106, 112 (1977)(“The bulge in the jacket permitted the officer to conclude that Mimms was armed and thus posed a serious and present danger to the safety of the officer. In these circumstances, any man of ‘reasonable caution’ would likely have conducted the ‘pat-down’”).

- 3) **Where a Suspect Makes Furtive Movements, That Factor Can Be Used to Justify a Terry Frisk.** A "furtive" movement by the defendant is a factor that can be used to justify a [Terry](#) frisk. See, e.g., [United States v. Holmes](#), 385 F.3d 786, 789 (D.C. Cir. 2004)(Upholding frisk of suspect in part because during the traffic stop, the officer observed the suspect "reaching under his seat as if to hide or retrieve a weapon"); [United States v. Cash](#), 378 F.3d 745, 748 (8th Cir. 2004)("Cash's extreme nervousness toward the officers and her furtiveness in concealing the shopping bag from the officers were significant factors which ... may establish reasonable suspicion for a [Terry](#) stop and frisk") [United States v. Michelletti](#), 991 F.2d 183, 185 (5th Cir. 1993), *reh'g en banc*, 13 F.3d 838 (5th Cir.), *cert. denied*, 513 U.S. 829 (1994)("The fact that he kept his right hand in his pocket at all times, given the surrounding circumstances, was reason enough to suspect Michelletti of possibly being armed and warranted the pat down frisk for the officers' and, possibly, the bystanders' safety"); [United States v. Quarles](#), 955 F.2d 498, 501-502 (8th Cir.), *cert. denied*, 504 U.S. 944 (1992)("Officer Flaherty's decision to frisk Brown to determine if he was armed was permissible, especially since Flaherty saw Brown put his hands inside his pants").
- 4) **The Suspect's Behavior.** During a [Terry](#) stop, a suspect's words and actions can give rise to the reasonable suspicion necessary to conduct a frisk. See, e.g., [Holmes](#), 385 F.3d at 790 (Frisk of suspect justified in part where suspect had been drinking and "continuously reached for his pocket despite repeatedly being directed not to do so" by the officer); [United States v. Wallen](#), 388 F.3d 161, 166-67 (5th Cir. 2004)(Frisk of vehicle justified, in part, on fact that suspect "disobeyed [the officer's] instruction to 'hang tight' at the rear of the truck," then "delayed in complying with the instruction to return when he subsequently left his position"); [United States v. Rideau](#), 969 F.3d 1572, 1575 (5th Cir. 1992) (detainee's act of backing away from officer could, under the circumstances, be construed as an attempt to gain room to use a weapon); [United States v. Bell](#), 762 F.2d 495, 501 (6th Cir. 1985) ("Bell's failure to follow [the FBI agent's] instructions [to put his hands on the dashboard] would significantly and immediately heighten the level of concern upon the part of the officer"); [United States v. Brown](#), 188 F.3d 860, 865 (7th Cir. 1999) (detainee "was more nervous than one would expect in a routine traffic stop," and kept "repeatedly glancing back towards the car in question").
- 5) **The Nature of Offense Under Investigation Can Be Considered in Determining Whether a Frisk is Justified.** "A police officer may base his belief that a suspect is armed and dangerous on the nature of the criminal activity despite the fact that he did not personally observe any physical indication of a weapon such as a bulge." [United States v. Terry](#), 718 F. Supp. 1181, 1185 (S.D.N.Y. 1989), *aff'd w/o opinion*, 927 F.2d 593 (2d Cir. 1991). There are some offenses that are, by their very nature, crimes in which the perpetrators are armed and dangerous. In such cases, the nature of the offense under investigation can establish the reasonable suspicion necessary for a [Terry](#) frisk. These types of crimes may include, for example:

- a) **Robbery**, [Terry](#), *supra* ;

- b) **Burglary and Car Theft.** [United States v. Walker](#), 924 F.2d 1, 4 (1st Cir. 1991)(Frisk justified, in part, on the officer's "experience that burglars often carry weapons or other dangerous objects"); [United States v. Hanlon](#), 401 F.3d 926, 929 (8th Cir. 2005) ("[W]hen officers encounter suspected car thieves, they may also reasonably suspect that such individuals might possess weapons");
 - c) **Drug Trafficking.** [Jacob](#), 377 F.3d at 579 (Noting that "officers who stop a person who is 'reasonably suspected of carrying drugs' are 'entitled to rely on their experience and training in concluding that weapons are frequently used in drug transactions,' and to take reasonable measures to protect themselves")(citation omitted); [United States v. Hernandez-Rivas](#), 348 F.3d 595, 599 (7th Cir. 2003)(Frisk upheld where wiretaps revealed suspect owned a firearm and was engaged in drug trafficking, "a crime infused with violence") (citation omitted); [United States v. Scott](#), 270 F.3d 30, 41 (1st Cir. 2001), cert. denied, 535 U.S. 1007 (2002)("When the officer suspects a crime of violence, the same information that will support an investigatory stop will without more support a frisk This Circuit has extended that rule to encompass crimes commonly associated with violence, even though the criminal act itself may be nonviolent; an example is large-scale trafficking in illegal drugs"); [United States v. McMurray](#), 34 F.3d 1405, 1410 (8th Cir. 1994), cert. denied, 513 U.S. 1179 (1995)("The officers' reasonable suspicion that McMurray was dealing drugs provides an adequate basis for them to reasonably believe he might be armed and dangerous, because 'weapons and violence are frequently associated with drug transactions'")
 - d) **Aggravated Assault.** [United States v. Shambry](#), 392 F.3d 631, 635 (3d Cir. 2004)("The frisk was also justified under [Terry](#) insofar as Officer Gramaglia had an articulable suspicion that Shambry had been involved in a crime of violence ...").
- g. **The "Plain Touch" Doctrine.** In [Minnesota v. Dickerson](#), 508 U.S. 366 (1993), the Supreme Court created what has become known as the "plain touch" doctrine. In sum, the "plain touch" doctrine is nothing more than an expansion of the "plain view" doctrine discussed in **EPO # 18**, below.
- "If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." [Id.](#) at 375-376.

While the purpose of a [Terry](#) frisk is to discover weapons, not evidence of a crime, the Supreme Court has "already held that police officers, at least under certain circumstances, may seize contraband detected during the lawful execution of a [Terry](#) search." [Id.](#) at 374. See [Michigan v. Long](#), 463 U.S. 1032, 1050 (1983) ("If, while conducting a legitimate [Terry](#) search ... the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances"); [United States v. Thomson](#), 354 F.3d 1197, 1200 (10th Cir. 2003) ("If the police detect a weapon or contraband during a [Terry](#) search, they are entitled to seize it. This is true whether the [Terry](#) search is a simple frisk or a limited search beyond the person of the suspect"). In order to lawfully seize evidence under the "plain touch" doctrine, three (3) requirements must be met.

- 1) **The First Element of the "Plain Touch" Doctrine is that the Frisk Must Be Lawful.** First, the frisk that led to the discovery of the evidence must have been lawful. Relying upon the reasoning of [Michigan v. Long](#), 463 U.S. 1032 (1983) and [United States v. Hensley](#), 469 U.S. 221 (1985), the Court held the "plain touch" doctrine applies only where a law enforcement officer "lawfully pats down a suspect's outer clothing." [Dickerson](#), 508 U.S. at 375; [Long](#), 436 U.S. at 1050 (Contraband discovered by officer "while conducting a legitimate [Terry](#) search" is admissible). Further, "the rationale of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a *lawful vantage point*, there has been ... no search independent of the initial intrusion that gave the officers their vantage point." [Id.](#) (emphasis added).
- 2) **The Second Element of the "Plain Touch" Doctrine is that the "Incriminating Nature of the Item Be Immediately Apparent."** Second, the incriminating nature of the item must be immediately apparent. This means a law enforcement officer must have probable cause that the object in plain view is subject to seizure, such as contraband. See [Dickerson](#), 508 U.S. at 375 ("If ... the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object – i.e., if 'its incriminating character is not immediately apparent' – the plain-view doctrine cannot justify its seizure"). As noted by the Court: "Regardless of whether the officer detects the contraband by sight or by touch ... the Fourth Amendment's requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures." [Id.](#) at 376 (footnote omitted).

- 3) **The Third Element of the “Plain Touch” Doctrine is that it is Limited to the Initial Touch.** Finally, the “plain touch” doctrine is limited to the initial touch of the item by the law enforcement officer. In [Dickerson](#), *supra*, the officer determined that the lump found in the defendant's pocket was contraband only after “squeezing, sliding and otherwise manipulating the contents of the defendant's pocket.” [Id.](#) at 378. The Court found this type of manipulation unlawful: “Here, the officer's continued exploration of [Dickerson's] pocket after having concluded that it contained no weapon was unrelated to ‘the sole justification of the search [under [Terry](#):] ... the protection of the police officer and others nearby.’ It therefore amounted to the sort of evidentiary search that [Terry](#) expressly refused to authorize, and that we have condemned in subsequent cases.” [Id.](#) (emphasis added; internal citations omitted). Thus, “the police officer ... overstepped the bounds of the ‘strictly circumscribed’ search for weapons allowed under [Terry](#).” [Id.](#)

NOTE: The Third Circuit has rephrased this rule in a useful fashion, holding that an officer conducting a lawful frisk is allowed to slide or manipulate an object in a suspect's pocket, consistent with a routine frisk, until the officer is able to reasonably eliminate the possibility that the object is a weapon. “The proper question. . . is not the immediacy and certainty with which an officer knows an object to be contraband or the amount of manipulation required to acquire that knowledge, but rather what the officer believes the object is by the time he concludes that it is not a weapon.” [United States v. Yamba](#), 506 F.3d 251, 259 (3rd Cir. 2007). See also [United States v. Mattarolo](#), 209 F.3d 1153, 1158 (9th Cir. 2000) (“Had the officer continued to manipulate the object beyond what was necessary to ascertain that it posed no threat, he would have run afoul of the Supreme Court's holding in *Minnesota v. Dickerson*.”); and [United States v. Rogers](#), 129 F.3d 76, 79 (2nd. Cir. 1997).

- h. **Frisking the Companion of an Arrestee (The Automatic Companion Rule).** Some, but not all, federal courts have adopted the “automatic companion” rule, which grants a law enforcement officer the authority to lawfully conduct a “frisk” for weapons on any person who is accompanying an arrestee at the time of the arrest. “The Supreme Court has never directly addressed the applicability of the [Terry](#) exception to a search of the companion of an arrestee.” [United States v. Flett](#), 806 F.2d 823, 826 (8th Cir. 1986). While some guidance on this issue may be found in select Supreme Court decisions, such as [Terry](#) and [Ybarra v. Illinois](#), 444 U.S. 85 (1979), a lack of clear direction has resulted in a split among the United States Circuit Courts of Appeal over the constitutionality of the “automatic companion” rule.
- 1) **Three Circuits Have Adopted the Automatic Companion Rule.** Currently, three circuits (the Fourth, Seventh, and Ninth) have adopted a bright-line rule allowing law enforcement officers to “frisk” the companion of an arrestee. See [United States v. Berryhill](#), 445 F.2d 1189, 1193 (9th Cir. 1971)(“All companions of an arrestee within the immediate vicinity, capable of accomplishing a harmful assault on the officer, are constitutionally subjected to the cursory ‘pat-down’ reasonably necessary to give assurance that they are unarmed”); [United States v. Poms](#), 484 F.2d 919 (4th Cir. 1973)(per curiam)(Same); [United States v. Simmons](#), 567 F.2d 314 (7th Cir. 1977)(same).

- 2) **Two Circuits Have Expressly Rejected the Automatic Companion Rule.** Two circuits (the Sixth and Eighth) have rejected the “automatic companion” rule, expressing serious reservations about the rule’s constitutionality, based upon the Supreme Court’s rulings in both [Terry](#) and [Ybarra](#) regarding individualized “reasonable suspicion.” In [United States v. Bell](#), 762 F.2d 495 (6th Cir.), *cert. denied*, 474 U.S. 853 (1985), the Sixth Circuit refused the government’s invitation to adopt the “automatic companion” rule, noting “serious reservations about the constitutionality of such a result under existing precedent.” *Id.* at 498. The Sixth Circuit again rejected the “automatic companion” rule in [United States v. Wilson](#), 506 F.3d 488, 494 (6th Cir. 2007), holding that the Terry requirement of reasonable suspicion has not been “eroded to the point that an individual may be frisked based upon nothing more than an unfortunate choice of associates.” (internal quotes and citation omitted). Similarly, in [United States v. Flett](#), 806 F.2d 823 (8th Cir. 1986), the Eighth Circuit refused to adopt the “automatic companion” rule, citing both [Terry](#) and [Ybarra](#) in support of its decision. In each of these cases, the courts emphasized that, while the single fact of companionship does not, standing alone, justify a frisk, “it is not irrelevant to the mix that should be considered in determining whether the agent’s actions were justified.” [Bell](#), 762 F.2d at 500. *See also* [Flett](#), 806 F.2d at 827; [Wilson](#), 506 F.3d at 494.

- i. **Vehicles - Investigative Stops and Terry Frisks.** “The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of [a] vehicle.” [United States v. Cortez](#), 449 U.S. 411, 417 (1981). “Stopping an automobile and detaining its occupants constitutes a ‘seizure’ within the meaning of [the Fourth Amendment, even though the purpose of the stop is limited and the resulting detention quite brief.” [Delaware v. Prouse](#), 440 U.S. 648, 653 (1979). As with any other type of “seizure,” “[a]n automobile stop is subject to the Fourth Amendment imperative that the stop must be reasonable.” [United States v. Ramos-Caraballo](#), 375 F.3d 797, 800 (8th Cir. 2004).

- 1) **Vehicle Stops Are Analogous to Investigative Detentions.** “Because a routine traffic stop is only a limited form of seizure, it is more analogous to an investigative detention than a custodial arrest.” [United States v. Purcell](#), 236 F.3d 1274, 1277 (11th Cir.), *cert. denied*, 534 U.S. 830 (2001). *See* [Berkemer v. McCarty](#), 468 U.S. 420, 439 (1984) (“The usual traffic stop is more analogous to a so-called ‘Terry stop,’ than to a formal arrest”)(internal citation and footnote omitted); [United States v. Rosborough](#), 366 F.3d 1145, 1150 (10th Cir. 2004)(Noting that “investigative detentions arising out of routine traffic stops are analyzed under the framework of [Terry](#) and its progeny”); [United States v. Garrido-Santana](#), 360 F.3d 565, 570-71 (6th Cir. 2004) (“A traffic stop is reasonable under the Fourth Amendment where the stop was both proper at its inception and ‘reasonably related in scope to the circumstances ... [that] justified the ... [stop] in the first place’”(citation omitted).

- 2) **Driver and Passengers are “Seized” During a Traffic Stop.** When police stop a vehicle, both the driver and any passengers are effectively seized, giving passengers the right to challenge the legality of the stop and the admissibility of evidence discovered as a result. Brendlin v. California, 127 S.Ct. 2400 (2007).
- 3) **Reasonable Suspicion is Required to Conduct a Vehicle Stop.** A law enforcement officer may conduct a traffic stop or other investigative stop of a vehicle if the officer has, at a minimum, reasonable suspicion that “the person stopped is, or is about to be, engaged in criminal activity.” Cortez, 449 U.S. at 417. ++ By contrast, reasonable suspicion is not required to have a voluntary contact of someone in the driver’s seat of a parked vehicle.”; U.S. v. Lewis, 2010 U.S. App. LEXIS 10872 (4th Cir. 2010)
- a) **Observed Traffic Violations May Form the Basis For the Stop.** For example, “a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation.” Manjarrez, 348 F.3d at 884. See also United States v. Serena, 368 F.3d 1037, 1040 (8th Cir. 2004)(Traffic stop permitted where officer reasonably believed tags on vehicle were expired); United States v. Williams, 359 F.3d 1019, 1021 (8th Cir. 2004) (Officer had probable cause for stop based upon stop-sign violation); Bonner, 363 F.3d at 216 (“A police officer who observes a violation of state traffic laws may lawfully stop the car committing the violation”).

NOTE: All states have statutes that prohibit moving in and out of traffic lanes in an unsafe manner. See, e.g., S.D. Codified Laws 32-26-6 (“On a roadway divided into lanes, a vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety”). One source of conflict between the Federal circuit courts of appeals concerns whether a single, isolated incident of crossing either the center or fog line is sufficient to establish a violation of these types of state statutes. In United States v. Martinez, 354 F.3d 932 (8th Cir. 2004), the Eighth Circuit Court of Appeals held an officer’s traffic stop was justified, even though he “observed no traffic violations other than [a] single fog-line crossing ...” Id. at 934. Alternatively, both the Sixth and Tenth Circuit Courts of Appeals have found that a single crossing of the line was insufficient to justify a violation of the sort of statute discussed above. See United States v. Freeman, 209 F.3d 464, 466 (6th Cir. 2000)(“We cannot, however, agree that one isolated incident of a large motor home partially weaving into the emergency lane for a few feet and in an instant in time constitutes a failure to keep the vehicle within a single lane ‘as nearly as practicable’”); United States v. Gregory, 79 F.3d 973, 978 (10th Cir. 1996) (Noting that, under certain conditions, “any vehicle could be subject to an isolated incident of moving into the right shoulder of the roadway, without giving rise to a suspicion of criminal activity”).

- b) **Reasonable Suspicion a Vehicle is Carrying Contraband Will Justify a Stop.** A traffic stop is also permissible in situations where reasonable suspicion exists to believe the vehicle is carrying contraband. See United States v. Singh, 363 F.3d 347, 355 (4th Cir. 2004)(Noting “it is elementary that the authorities are entitled to stop a moving vehicle reasonably suspected of involvement in smuggling contraband, and they may briefly detain and investigate such a vehicle and its occupants”).

- c) **Traffic Stops Are Permitted Where Reasonable Suspicion Exists to Believe a Driver or Occupant is Wanted For Past Criminal Conduct.** Similarly, “an officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct.” [*Id.*](#) at 417 n.2. See also [*United States v. Botero-Ospina*](#), 71 F.3d 783, 787 (10th Cir. 1995), [*cert. denied*](#), 518 U.S. 1007 (1996)(Noting “a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring”).
- 4) **Permissible Actions During Vehicle Stops.** The Supreme Court has long recognized the very real dangers faced by law enforcement officers who confront suspects located in vehicles. See [*Michigan v. Long*](#), 463 U.S. 1032, 1048 (1983)(Noting “danger presented to police officers in ‘traffic stops’ and automobile situations”); [*Pennsylvania v. Mimms*](#), 434 U.S. 106, 110 (1977)(Decision rested, in part, on the “inordinate risk confronting an officer as he approaches a person seated in an automobile”); [*Adams v. Williams*](#), 407 U.S. 143, 148 n.3 (1972) (Citing a study indicating that “approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile”). For that reason, when law enforcement officers conduct vehicle stops, they may “take such steps as are reasonably necessary to protect their personal safety.” [*United States v. Hensley*](#), 469 U.S. 221, 235 (1985). This would include, for example, “the authority and duty to control the vehicle and its occupants, at least for a brief period of time.” [*Bonner*](#), 363 F.3d at 217. Some of the most common of those permissible actions are listed below.
- a) **The Driver May Be Removed From the Vehicle.** “Once a motor vehicle has been lawfully detained ... the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable searches and seizures.” [*Pennsylvania v. Mimms*](#), 434 U.S. 106, 111 n.6 (1977). This is true even in situations where the law enforcement officer has no reason to suspect “foul play.” [*Id.*](#) at 109.
- b) **The Passengers May Be Removed From the Vehicle.** In [*Maryland v. Wilson*](#), 519 U.S. 408 (1997), the Supreme Court extended the holding of [*Mimms*](#) to those who are passengers in the vehicle: “We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.” [*Id.*](#) at 415.

- c) **The Passengers May Be Ordered to Remain in or Return to the Vehicle.** Of course a law enforcement officer may also order passengers to remain **inside** the vehicle during the stop. See [Rogala v. District of Columbia](#), 161 F.3d 44, 53 (D.C. Cir. 1998) (“A police officer has the power to reasonably control the situation by requiring a passenger to remain in a vehicle during a traffic stop”); [United States v. Moorefield](#), 111 F.3d 10, 13 (3d Cir. 1997) (“In view of the Supreme Court’s ruling in [Wilson](#), we have no hesitancy in holding that the officers lawfully ordered Moorefield to remain in the car with his hands in the air”); [United States v. Clark](#), 337 F.3d 1282, 1287-88 (11th Cir. 2003)(same). Similarly, an officer may order a passenger to re-enter the vehicle during the stop if the passenger gets out of the car. [United States v. Sanders](#), 510 F.3d 788 (8th Cir. 2007).
- d) **A Flashlight May Be Used to Illuminate the Interior of a Vehicle.** A law enforcement officer may also use a flashlight to illuminate the darkened interior of a vehicle. See [Texas v. Brown](#), 460 U.S. 730, 739-740 (1983) (plurality opinion) (“It is likewise beyond dispute that Maples’ action in shining his flashlight to illuminate the interior of Brown’s car trenching upon no right secured to the latter by the Fourth Amendment Numerous other courts have agreed that the use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection”)(footnote omitted).
- e) **Where Windows Are Heavily Tinted, They May Be Opened to Check for Weapons.** “When, during already dangerous traffic stops, officers must approach vehicles whose occupants and interiors are blocked from view by tinted windows, the potential harm to which the officers are exposed increases exponentially....” [United States v. Stanfield](#), 109 F.3d 976, 981 (4th Cir.), cert. denied, 522 U.S. 857 (1997). Accordingly, at least one court has held that “whenever, during a lawful traffic stop, officers are required to approach a vehicle with windows so heavily tinted that they are unable to view the interior of the stopped vehicle, they may, when it appears in their experienced judgment prudent to do so, open at least one of the vehicle’s doors and, without crossing the plane of the vehicle, visually inspect its interior in order to ascertain whether the driver is armed, whether he has access to weapons, or whether there are other occupants of the vehicle who might pose a danger to the officers.” [Id.](#)

- f) **Where a Passenger is Unable to Exit the Vehicle, Officers May Open The Door to Inspect the Occupant.** After ordering an occupant to exit a vehicle and hearing that he claims to be physically unable to do so, an officer may open the occupant's door and conduct a minimally necessary visual inspection of the occupant. If the inspection reveals articulable facts constituting reasonable suspicion that the occupant is armed and dangerous, he may be patted down to the same extent as he could have been if he had complied with the order to exit the vehicle. United States v. Meredith, 480 F.3d 366 (5th Cir. 2007).
- g) **License and Registration Checks May Be Conducted.** Once an individual has been lawfully detained during a traffic stop, a law enforcement officer may investigate the driver's license and vehicle registration, seek consent to search the vehicle, and run a computer check for outstanding warrants. See, e.g., Singh, 363 F.3d at 357 ("Where reasonable suspicion exists to support the stop of a moving vehicle, officers are entitled to conduct an investigatory detention to obtain consent to search or to develop probable cause"); United States v. Simmons, 172 F.3d 775, 778 (11th Cir. 1999)("Once the police had validly detained Simmons, plainly they were entitled under the decisional law to conduct a variety of checks on the driver and his car, including questioning the driver about the traffic violation, requesting consent to search the car, and running a computer check for outstanding warrants"); United States v. Allegree, 175 F.3d 648, 650 (8th Cir.), cert. denied, 528 U.S. 958 (1999)("A reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration, asking the driver to sit in the patrol car, and asking about the driver's destination and purpose"); United States v. Dexter, 165 F.3d 1120, 1126 (7th Cir. 1999)("[W]hen a vehicle is pulled over, an officer may ask for a driver's license and registration as a routine matter"); United States v. Mendez, 118 F.3d 1426, 1429 (10th Cir. 1997)("An officer conducting a routine traffic stop may run computer checks on the driver's license, the vehicle registration papers, and on whether the driver has any outstanding warrants or the vehicle has been reported stolen").

NOTE: "When a law enforcement officer is investigating a traffic violation or an accident, and the driver is unwilling or unable to produce the registration of the vehicle involved to the officer upon demand, it is reasonable for the officer to conduct a limited search for the registration in those areas where the registration would likely be located." [United States v. Kelly](#), 267 F. Supp. 2d 5, 14 (D.D.C. 2003). See also 3 W. LaFare, *Search and Seizure* § 7.4(d), p. 566 (3d ed. 1996) ("Under a variety of circumstances, it is reasonable for the police to make a limited search of a vehicle in an effort to determine ownership"); [Quezada v. Hubbard](#), 2002 U.S. Dist. LEXIS 13162, at *8 (D. Cal. 2002) (Where driver "did not produce his driver's license or other identification, and the registration offered by the passenger could not be verified," officer's search of driver's seat armrest, "which [was] a likely place for storage of a license and registration," was permissible); [State v. Jones](#), 478 A.2d 424, 426 (N.J. Super. Ct. App. Div. 1984) (Noting that, "where there has been a traffic violation and the operator of the motor vehicle is unable to produce proof of registration, a police officer may search the car for evidence of ownership"); [State v. Taras](#), 504 P.2d 548, 552 (Ariz. Ct. App. 1972) ("Thus, we conclude that if a driver is unable to produce proof of registration, the officer may conduct a limited search of the car for evidence of automobile ownership"). These same principles would also apply to situations where a search is being conducted for ownership information regarding an abandoned vehicle. See, e.g., [Kelly](#), 267 F. Supp. 2d at 13 (Noting that "a police officer who encounters an abandoned car on a public highway may search the vehicle for the registration"); [Muegel v. State](#), 272 N.E. 2d 617, 620 (Ind. 1971) (Same).

- h) **Requests for Passengers' Identification.** Just as an officer may ask for the identification of the driver of a lawfully stopped vehicle, so he may request identification of the passengers also lawfully stopped. No separate showing is required. When an officer lawfully stops a vehicle, the identity of the persons in whose company the officer suddenly finds himself may be pertinent to the officer's well-being. [United States v. Soriano-Jarquín](#), 492 F.3d 495 (4th Cir. 2007) (Eighth and Eleventh Circuits agree).
- i) **Questions Regarding Travel Plans May Be Asked.** "Questions about travel plans are routine and 'may be asked as a matter of course without exceeding the proper scope of a traffic stop.'" [United States v. West](#), 219 F.3d 1171, 1176 (10th Cir. 2000). See also [United States v. Hill](#), 195 F.3d 258, 268 (6th Cir. 1999), cert. denied, 528 U.S. 1176 (2000) (Officer's questions to suspect about his moving plans were reasonable, "in that the questions related to [the suspect's] purpose for traveling"); [United States v. \\$ 404,905.00](#), 182 F.3d 643, 647 (8th Cir. 1999) (During lawful stop, "the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle, and he may act on whatever information is volunteered"). "Travel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop. For example, a motorist's travel history and travel plans may help explain, or put into context, why the motorist was weaving (if tired) or speeding (if there was an urgency to the travel)." [United States v. Holt](#), 264 F.3d 1215, 1221 (10th Cir. 2001).

- j) **Questions Unrelated to the Purpose of the Traffic Stop May Be Asked If They Do Not Prolong the Stop.** An officer need not have separate reasonable suspicion or probable cause to ask questions unrelated to the reason for the traffic stop, so long as the questioning does not prolong the stop. [United States v. Mendez](#), 476 F.3d 1077 (9th Cir. 2007), citing [Muehler v. Mena](#), 544 U.S. 93 (2005).
- k) **A Law Enforcement Officer is Not Required to Notify a Suspect He is Free to Leave Before Seeking Consent to Search.** As noted above, once a vehicle has been lawfully stopped, officers are lawfully entitled to request consent to search the vehicle. See [Simmons](#), 172 F.3d at 778. Additionally, a law enforcement officer who has lawfully detained a suspect during a vehicle stop is not required to inform the suspect that he or she is free to leave before obtaining a valid consent to search. [Ohio v. Robinette](#), 519 U.S. 33, 40 (1996)
- 5) **Terry Frisks of Vehicles.** In [Michigan v. Long](#), 463 U.S. 1032 (1983), the Supreme Court expanded the scope of a [Terry](#) frisk to include vehicles. See [United States v. Wallen](#), 388 F.3d 161, 165 (5th Cir. 2004) ("The Supreme Court determined that protective pat-down/frisk searches authorized by [Terry v. Ohio](#) extend to ... automobiles...."). Accordingly, a law enforcement officer "may pat down the occupants of [a] vehicle and conduct a search of the passenger compartment, if he has reasonable suspicion that the occupants might be armed and dangerous." [Bonner](#), 363 F.3d at 216. Compare [United States v. Baker](#), 47 F.3d 691, 695 (5th Cir.), cert. denied, 515 U.S. 1168 (1995)(Upholding protective automobile search based on existence of hunting knife, ammunition, and occupant's general statement that she "did not know" the location of a pistol), with [Estep v. Dallas County](#), 310 F.3d 353, 358 (5th Cir. 2002)(Holding that camouflage gear, National Rifle Association sticker, key-chain mace, and an unusual tone of voice on the part of the passenger did not justify protective automobile search).

NOTE: There is often confusion on the part of students regarding the difference between "frisking" a vehicle during a [Terry](#) stop and "searching" the vehicle incident to the arrest of an occupant. At least one Federal circuit court of appeal has suggested that the "Supreme Court in [Long](#) defined the scope of a permissible protective search by borrowing the standard for vehicle searches incident to arrest established in [New York v. Belton](#), 453 U.S. 454 (1981)." [United States v. Arnold](#), 388 F.3d 237, 239 (7th Cir. 2004). Accordingly, the Seventh Circuit Court of Appeals has found that "the difference between a search under [Belton](#) and one under [Long](#) is simply the rationale for conducting it, not its physical boundaries." [Id.](#) at *7. Of course, "[a]lthough the general search area covered by [Belton](#) and [Long](#) is the same, the limited rationale for permitting a search under [Long](#) - safety concerns - constrains an officer to search only the locations that may contain a weapon and to which the motorist may have access." [Id.](#) (citation omitted). "Hence, assuming that an officer limits his search to those areas, the boundaries of the passenger compartment under [Belton](#) apply equally to the scope of a search under [Long](#)." [Id.](#)

- a) **The Passenger Compartment May Be “Frisked.”** In sum, if reasonable suspicion exists to believe that the driver or passenger in a vehicle is dangerous and may gain immediate control of a weapon, a law enforcement officer may “frisk” that person, as well as the entire passenger compartment of the vehicle. Id. at 1049; United States v. Cook, 277 F.3d 82, 85 (1st Cir. 2002) (Where law enforcement officer “has a reasonable basis to suspect that the subject of his inquiry may be armed, he also may frisk the suspect and undertake a limited search of the passenger compartment of any vehicle in which he is sitting”).
- b) **Containers Located Inside the Passenger Compartment May Be Frisked.** A “frisk” of a vehicle under Long may include any unlocked containers located in the passenger compartment. See, e.g., Holmes, 376 F.3d at 280-81 (Holding that Long allowed frisk of entire passenger compartment of vehicle where weapons could be found, including “‘containers’ like the center console and glove compartment”). Additionally, some courts have extended this rule to include locked containers, such as a locked glove compartment. See, e.g., United States v. Palmer, 360 F.3d 1243, (10th Cir. 2004)(Protective search of locked glove box permissible based on danger suspect may break away to obtain weapon); United States v. Holifield, 956 F.2d 665, 668-69 (7th Cir. 1992)(Frisk of locked glove box permissible in that “[o]nce the occupants reentered the vehicle, it would have taken only a few seconds for Holifield or one of the passengers to remove the keys from the ignition and unlock the glove compartment, thus giving them immediate access to the pistol”); United States v. Brown, 913 F.2d 570, 571-72 (8th Cir.), cert. denied, 498 U.S. 1016 (1990)(Upholding search of locked glove compartment where key was “lying on car’s front seat”).
- c) **The Trunk May Not Be “Frisked.”** However, a law enforcement officer may not “frisk” the trunk of the vehicle. See Arnold, 388 F.3d at 240 (“An officer armed solely with reasonable suspicion may not search the trunk of a vehicle when the motorist would not have been able to reach a weapon located there ...”); United States v. Brown, 334 F.3d 1161, 1170 (D.C. Cir. 2003) (Noting that Terry frisks “are limited to areas immediately accessible to the suspect,” specifically, “the passenger compartment of the car”); United States v. Wimbush, 337 F.3d 947, 950 (7th Cir.), cert. denied, ___ U.S. ___, 124 S. Ct. 848 (2003)(“Officers may conduct a protective search of a vehicle’s passenger compartment when they have a reasonable belief that the suspect poses a danger and that their safety may be threatened by the possible presence of weapons”).

NOTE: Many newer model vehicles allow a driver or passenger to access the trunk through the interior of the vehicle, primarily through a fold-down back seat or armrest. The only court to have addressed the situation to date has found that, In situations where “the trunk [is] generally accessible from the passenger compartment,” perhaps through a fold-down back seat, the seat may be lowered and the trunk may be “frisked” by a law enforcement officer. Arnold, 388 F.3d at 240.

- 6) **Duration of Vehicle Stops.** As with a traditional investigative stop, an investigative detention that occurs in a vehicle “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” [Florida v. Royer](#), 460 U.S. 491, 500 (1983). “Ordinarily, when a citation or warning has been issued and all record checks have been completed and come back clean, the legitimate investigative purpose of the traffic stop is fulfilled, and the driver’s license and other documents should be returned.” [United States v. Simms](#), 385 F.3d 1347, 1353 (11th Cir. 2004). See also [United States v. Fuse](#), 391 F.3d 924, 927 (8th Cir. 2004) (“Once the officer decides to let a routine traffic offender depart with a ticket, a warning or an all clear—a point in time determined, like other Fourth Amendment inquiries, by objective indicia of the officer’s intent—then the Fourth Amendment applies to limit any subsequent detention or search”). “If a traffic stop is unjustifiably prolonged past the point when a driver’s documents should have been returned, it may be found to have ended at the point when the documents should have been returned, and not when they were actually returned.” [Simms](#), 385 F.3d at 1353.
- 7) **Extending the Questioning Beyond That Related to the Initial Stop.** Generally, “questioning that prolongs the detention, yet cannot be justified by the purpose of such an investigatory stop, is unreasonable under the Fourth Amendment.” [United States v. Childs](#), 277 F.3d 947, 952 (7th Cir.), cert. denied, 537 U.S. 829 (2002). See also [Garrido-Santana](#), 360 F.3d at 574 (Noting “[t]he circuit courts generally agree that the Fourth Amendment requires that, absent some additional justification, any questioning during a valid traffic stop must not prolong the detention necessary to complete the initial purpose of that stop”). Nevertheless, “[l]engthening the detention for further questioning beyond that related to the initial stop is permissible in two circumstances.

- a) **Extending the Stop Based Upon Reasonable Suspicion.** “First, the officer may detain the driver for questioning unrelated to the initial stop if he has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring.” [United States v. Hunnicutt](#), 135 F.3d 1345, 1349 (10th Cir. 1998). See also [United States v. Barragan](#), 379 F.3d 524, 529 (8th Cir. 2004)(“If the responses of the detainee and the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden his inquiry and satisfy those suspicions”); [United States v. Wood](#), 106 F.3d 942, 946 (10th Cir. 1997)(“The scope and duration of a traffic stop may be expanded beyond its initial purpose if, and only if, the police officer has ‘a particularized and objective basis for suspecting the particular person stopped of criminal activity’”); [Holt](#), 264 F.3d at 1221 (“Further delay is justified only if the officer has reasonable suspicion of illegal activity. ...”); [United States v. Grant](#), 349 F.3d 192, 196 (5th Cir. 2003)(“Once an officer’s suspicions have been verified or dispelled, the detention must end unless there is additional articulable, reasonable suspicion”); [United States v. Townsend](#), 305 F.3d 537, 541 (6th Cir. 2002) (“To detain the motorist any longer than is reasonably necessary to issue the traffic citation ... the officer must have reasonable suspicion that the individual has engaged in more extensive criminal conduct”); [United States v. Gregory](#), 302 F.3d 805, 809 (8th Cir. 2002)(“If the responses of the detainee and the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden his inquiry and satisfy those suspicions”) (citation omitted); [United States v. Pruitt](#), 174 F.3d 1215, 1219 (11th Cir. 1999)(Noting “once an officer has briefly stopped a motor vehicle operator for the purpose of issuing a traffic violation (i.e., a ticket), the officer’s continuing detention of the vehicle’s occupants is authorized under the Fourth Amendment only if the officer can point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion”).

NOTE: In [Hunnicutt](#), *supra*, the court listed a number of factors that “may contribute to the formation of an objectively reasonable suspicion of illegal activity” distinct from the original purpose of the stop. [Id.](#) at 1349. Among those factors that have justified further questioning are: (1) having no proof of ownership of the vehicle; (2) having no proof of authority to operate the vehicle; (3) inconsistent statements about destination; (4) driving with a suspended license; and (5) a reluctance to stop. [Id.](#) Other courts have identified additional factors to lengthen a traffic stop, such as incriminating statements made by the occupants during the stop, [Grant](#), 349 F.3d at 197, and lying about travel plans, [Townsend](#), 305 F.3d at 543.

b) **Extending the Stop Based Upon the Consent of the Suspect.** “[F]urther questioning unrelated to the initial stop is [also] permissible if the initial detention has become a consensual encounter.” [Hunnicut](#), 135 F.3d at 1349. A vehicle stop “generally ends when the officer returns the driver’s license, registration, and insurance information.” [Manjarrez](#), 348 F.3d at 885. And, “[i]n several cases ... [courts] have acknowledged that a lawful traffic stop can devolve into a consensual encounter.” [United States v. Sanchez-Pena](#), 336 F.3d 431, 442 (5th Cir. 2003). For example, “[i]f the driver voluntarily consents to additional questioning, he is no longer seized for purposes of the Fourth Amendment because he is free to leave.” [United States v. Taverna](#), 348 F.3d 873, 878 (10th Cir. 2003). See, e.g., [United States v. Lattimore](#), 87 F.3d 647, 653 (4th Cir. 1996) (Where citation had been issued and license returned, “totality of the circumstances presented indicat[e]d ... from this point forward the encounter was consensual”); [United States v. White](#), 81 F.3d 775, 778 (8th Cir.), cert. denied, 519 U.S. 1011 (1996) (Noting that, after the suspect’s “license and registration were returned and the warning was issued, the encounter became nothing more than a consensual encounter between a private citizen and a law enforcement officer”).

j. **Pretextual Traffic Stops are Permissible.** “A pretextual stop occurs when the police use a legal justification to make a stop in order to search a person or his vehicle, or interrogate him, for an unrelated and more serious crime for which they do not have the reasonable suspicion necessary to support a stop.” [United States v. Morales-Zamora](#), 974 F.2d 149, 152 (10th Cir. 1992). In [Whren v. United States](#), 517 U.S. 806, 813 (1996), the Supreme Court upheld pretextual traffic stops, noting that the constitutionality of a traffic stop does not depend “on the actual motivations of the individual officers involved.” Thus, “an officer may stop a vehicle for a traffic violation when his true motivation is to search for contraband, as long as the officer had probable cause to initially stop the vehicle.” [United States v. Hill](#), 195 F.3d 258, 264 (6th Cir. 1999), cert. denied, 528 U.S. 1176 (2000). See also [Garrido-Santana](#), 360 F.3d at 571 (Noting that, “as long as a police officer has probable cause to believe that a motorist committed a traffic violation, the resulting traffic stop is generally reasonable under the Fourth Amendment regardless of the officer’s subjective intent or state of mind in conducting the traffic stop”); [Draper v. Reynolds](#), 369 F.3d 1270, 1275 (11th Cir. 2004) (Noting that “ulterior motives will not invalidate police conduct based on probable cause to believe a violation of the law occurred”).

D. EPO #4: IDENTIFY WHEN LAW ENFORCEMENT OFFICERS MAY OR MAY NOT USE RACE TO JUSTIFY STOPS OR ARRESTS IN ACCORDANCE WITH DEPARTMENT OF JUSTICE GUIDELINES

1. **The Use of Racial Profiling By Law Enforcement Officers - DOJ Guidelines.** The use of race as a factor utilized by law enforcement officers in the performance of their duties gives rise to numerous Constitutional concerns. In light of these concerns, the Department of Justice (DOJ) published in June of 2003 a document entitled "[Guidance Regarding the Use of Race By Federal Law Enforcement Agencies](#)." On June 1, 2004, the Department of Homeland Security (DHS) explicitly adopted the DOJ policy on racial profiling. See [DHS Racial Profiling Policy](#). The following excerpts are taken directly from that document, and provide the standard that will be taught by the FLETC Legal Division. The [guidance](#) itself is attached to this lesson plan and contains clarifying information and additional examples that may be helpful in presenting this material.

NOTE: On June 1, 2004, the Secretary of the Department of Homeland Security issued a policy statement on racial profiling. This statement provides as follows: "Racial profiling concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement activities. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. DHS explicitly adopts the Department of Justice's 'Guidance Regarding the Use of Race By Federal Law Enforcement Agencies,' issued in June 2003. It is the policy of the Department of Homeland Security to prohibit the consideration of race or ethnicity in our daily law enforcement activities in all but the most exceptional circumstances, as defined in the DOJ Guidance. DHS personnel may use race or ethnicity only when a compelling governmental interest is present. Rather than relying on race or ethnicity, it is permissible and indeed advisable to consider an individual's connections to countries that are associated with significant terrorist activity. Of course, race- or ethnicity-based information that is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises, may be considered, as stated in the DOJ Guidance."

- a. **The Constitutional Framework.** “[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.” [Whren v. United States](#), 517 U.S. 806, 813 (1996). Thus, for example, the decision of federal prosecutors “whether to prosecute may not be based on ‘an unjustifiable standard such as race, religion, or other arbitrary classification.’” [United States v. Armstrong](#), 517 U.S. 456, 464 (1996)[*quoting Oyer v. Boles*, 368 U.S. 448, 456 (1969)]. The same is true of Federal law enforcement officers. Federal courts repeatedly have held that any general policy of “utiliz[ing] impermissible racial classifications in determining whom to stop, detain, and search” would violate the Equal Protection Clause. [Chavez v. Illinois State Police](#), 251 F.3d 612, 635 (7th Cir. 2001). As the Sixth Circuit has explained, “[i]f law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen’s race, without more, then a violation of the Equal Protection Clause has occurred.” [United States v. Avery](#), 137 F.3d 343, 355 (6th Cir. 1997). “A person cannot become the target of a police investigation solely on the basis of skin color. Such selective law enforcement is forbidden.” *Id.* at 354. As the Supreme Court has held, this constitutional prohibition against selective enforcement of the law based on race “draw[s] on ‘ordinary equal protection standards.’” [Armstrong](#), 517 U.S. at 465 [*quoting Wayte v. United States*, 470 U.S. 598, 608 (1985)]. Thus, impermissible selective enforcement based on race occurs when the challenged policy has “a discriminatory effect and ... was motivated by a discriminatory purpose.” *Id.* (*quoting Wayte*, 470 U.S. at 608). Put simply, “to the extent that race is used as a proxy” for criminality, “a racial stereotype requiring strict scrutiny is in operation.” *Cf. Bush v. Vera*, 517 U.S. 952, 968 (1996)(plurality).
- b. **Guidance for Federal Officials Engaged in Law Enforcement Activities**
- 1) **Routine or Spontaneous Activities in Domestic Law Enforcement.** In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.
 - 2) **Law Enforcement Activities Related to Specific Investigations.** In conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. This standard applies even where the use of race or ethnicity might otherwise be lawful.
 - a) **Authorities May Never Rely on Generalized Stereotypes, But May Rely Only on Specific Race- or Ethnicity-Based Information.** Reliance upon generalized stereotypes is absolutely forbidden. Rather, use of race or ethnicity is permitted only when the officer is pursuing a specific lead concerning the identifying characteristics of persons involved in an *identified* criminal activity. The rationale underlying this concept carefully limits its reach. In order to qualify as a legitimate investigative lead, the following must be true:

- (1) The information must be relevant to the locality or time frame of the criminal activity;
- (2) The information must be trustworthy;
- (3) The information concerning identifying characteristics must be tied to the particular criminal incident, a particular criminal scheme, or a particular criminal organization.

This bar extends to the use of race-neutral pretexts as an excuse to target minorities. Federal law enforcement may not use such pretexts. This prohibition extends to the use of other, facially race-neutral factors as a proxy for overtly targeting persons of a certain race or ethnicity. This concern arises most frequently when aggressive law enforcement efforts are focused on "high crime areas." The issue is ultimately one of motivation and evidence; certain seemingly race-based efforts, if properly supported by reliable, empirical data, are in fact race-neutral.

- b) **The Information Must be Relevant to the Locality or Time Frame.** Any information concerning the race of persons who may be involved in specific criminal activities must be locally or temporally relevant.
- c) **The Information Must Be Trustworthy.** Where the information concerning potential criminal activity is unreliable or is too generalized and unspecific, use of racial descriptions is prohibited.

d) **Race- or Ethnicity-Based Information Must Always be Specific to Particular Suspects or Incidents, or Ongoing Criminal Activities, Schemes, or Enterprises.** These standards contemplate the appropriate use of both "suspect-specific" and "incident-specific" information. As noted above, where a crime has occurred and authorities have eyewitness accounts including the race, ethnicity, or other distinguishing characteristics of the perpetrator, that information may be used. Federal authorities may also use reliable, locally relevant information linking persons of a certain race or ethnicity to a particular incident, unlawful scheme, or ongoing criminal enterprise - even absent a description of any particular individual suspect. In certain cases, the circumstances surrounding an incident or ongoing criminal activity will point strongly to a perpetrator of a certain race, even though authorities lack an eyewitness account. It is critical, however, that there be reliable information that ties persons of a particular description to a specific criminal incident, ongoing criminal activity, or particular criminal organization. Otherwise, any use of race runs the risk of descending into reliance upon prohibited generalized stereotypes. Note that these standards allow the use of reliable identifying information about planned future crimes. Where federal authorities receive a credible tip from a reliable informant regarding a planned crime that has not yet occurred, authorities may use this information under the same restrictions applying to information obtained regarding a past incident. A prohibition on the use of reliable prospective information would severely hamper law enforcement efforts by essentially compelling authorities to wait for crimes to occur, instead of taking pro-active measures to prevent crimes from happening.

c. Guidance for Federal Officials Engaged in Law Enforcement Activities Involving Threats to National Security or the Integrity of the Nation's Borders

- 1) **Threats to National Security or Catastrophic Events.** In investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the Nation's borders, Federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States.
- 2) **Compelling Governmental Interest.** Since the terrorist attacks on September 11, 2001, the President has emphasized that federal law enforcement personnel must use every legitimate tool to prevent future attacks, protect our Nation's borders, and deter those who would cause devastating harm to our Nation and its people through the use of biological or chemical weapons, other weapons of mass destruction, suicide hijackings, or any other means. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." [Haig v. Agee](#), 453 U.S. 280, 307 (1981)[*quoting* [Aptheker v. Secretary of State](#), 378 U.S. 500, 509 (1964)].

- 3) **Exceptional Circumstances Required.** The Constitution prohibits consideration of race or ethnicity in law enforcement decisions in all but the most exceptional instances. Given the incalculably high stakes involved in such investigations, however, Federal law enforcement officers who are protecting national security or preventing catastrophic events (as well as airport security screeners) may consider race, ethnicity, and other relevant factors to the extent permitted by our laws and the Constitution. Similarly, because enforcement of the laws protecting the Nation's borders may necessarily involve a consideration of a person's alienage in certain circumstances, the use of race or ethnicity in such circumstances is properly governed by existing statutory and constitutional standards. See, e.g., [United States v. Brignoni-Ponce](#), 422 U.S. 873, 886-87 (1975). This policy will honor the rule of law and promote vigorous protection of our national security. As the Supreme Court has stated, all racial classifications by a governmental actor are subject to the "strictest judicial scrutiny." [Adarand Constructors, Inc. v. Peña](#), 515 U.S. 200, 224-25 (1995). The application of strict scrutiny is of necessity a fact-intensive process. *Id.* at 236. Thus, the legality of particular, race-sensitive actions taken by Federal law enforcement officials in the context of national security and border integrity will depend to a large extent on the circumstances at hand. In absolutely no event, however, may Federal officials assert a national security or border integrity rationale as a mere pretext for invidious discrimination. Indeed, the very purpose of the strict scrutiny test is to "smoke out" illegitimate use of race, [Adarand](#), 515 U.S. at 226 [*quoting* [Richmond v. J.A. Croson Co.](#), 488 U.S. 469, 493 (1989)], and law enforcement strategies not actually premised on *bona fide* national security or border integrity interests therefore will not stand. In sum, constitutional provisions limiting government action on the basis of race are wide-ranging and provide substantial protections at every step of the investigative and judicial process. Accordingly ... when addressing matters of national security, border integrity, or the possible catastrophic loss of life, existing legal and constitutional standards are an appropriate guide for Federal law enforcement officers.

NOTE: As noted above, federal law enforcement officers who are protecting national security or preventing catastrophic events (as well as airport security screeners) may consider race, ethnicity, and other relevant factors "to the extent permitted by our laws and the Constitution." Accordingly, the following section deals with the law (as opposed to the DOJ Guidance) on the use of race during law enforcement investigations regarding the protection of national security or prevention of catastrophic events.

2. **The Use of Racial Profiling By Law Enforcement Officers - Constitutional and Federal Law.** The use of race as a factor utilized by law enforcement officers in the performance of their duties gives rise to numerous Constitutional concerns. The following discussion concerns the use of race in what is referred to as the "pre-contact" stage. The "pre-contact" stage occurs "prior to the consensual encounter, when officers decide to 'target' someone for surveillance." [Avery](#), 137 F.3d at 353.

- a. **Race as the Sole Factor During Pre-Contact Stage.** In sum, “a person cannot become the target of a police investigation solely on the basis of skin color.” *Id.* at 354. “Although Fourth Amendment principles regarding unreasonable seizures do not apply to consensual encounters, an officer does not have unfettered discretion to conduct an investigatory interview with a citizen. The Equal Protection Clause of the Fourteenth Amendment provides citizens a degree of protection independent of the Fourth Amendment protection against unreasonable searches and seizures. This protection becomes relevant even before a seizure occurs.” *Id.* at 352. So, for example, a “factually supported record of the selection for interview because of race, a general practice or pattern that primarily targeted minorities for consensual interviews, or a racial component in the drug courier profile would have given rise to due process and equal protection constitutional implications cognizable by” a federal court. [United States v. Taylor](#), 956 F.2d 572, 578 (6th Cir.), *cert. denied*, 506 U.S. 952 (1992).
- b. **Race as One Factor Among Others During Pre-Contact Stage.** “In some instances, officers may decide to interview a suspect for many reasons, some of which are legitimate and some of which may be based on race. In such instances ... the use of race in pre-contact stage does not give rise to any constitutional protections.” [United States v. Travis](#), 62 F.3d 170, 174 (6th Cir. 1995), *cert. denied*, 516 U.S. 1060 (1996). Thus, while race may not be used as the sole factor to target an individual during the pre-contact stage, “if at the point an officer decides to *interview/encounter* a suspect he has gathered many reasons for that interview - one being race - the focus of the court is the consensual encounter, and the use of race as one factor in the pre-contact stage may not violate equal protection principles.” [Avery](#), 137 F.3d at 353 (emphasis in original). Further, “common sense dictates that, when determining whom to approach as a suspect of criminal wrongdoing, a police officer may legitimately consider race as a factor if descriptions of the perpetrator known to the officer include race.” [United States v. Waldon](#), 206 F.3d 597, 604 (6th Cir.), *cert. denied*, 531 U.S. 881 (2000).

E. EPO #5: IDENTIFY WHEN PROBABLE CAUSE EXISTS TO THE EXTENT THAT AN ARREST OR SEARCH MAY BE JUSTIFIED

1. General Rule – Probable Cause is the Standard for the Issuance of Warrants and the Arrests of Individuals.
 - a. **Issuance of Warrants.** The Fourth Amendment provides that “no Warrant shall issue but upon probable cause” Accordingly, “in cases in which the Fourth Amendment requires that a warrant to search be obtained, ‘probable cause’ is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness.” [Camara v. Municipal Court](#), 387 U.S. 523, 534 (1967). See also [Franks v. Delaware](#), 438 U.S. 154, 164 (1978) (“The bulwark of Fourth Amendment protection, of course, is the Warrant Clause, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search”).

- b. **Arrests.** Probable cause is also required before an individual may be arrested for a criminal violation. See, e.g., [Michigan v. Summers](#), 452 U.S. 692, 700 (1981)(Noting “every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause”); [Dunaway v. New York](#), 442 U.S. 200, 208 (1979)(“The standard of probable cause thus represented the ... minimum justification necessary to make the kind of intrusion involved in an arrest ‘reasonable’ under the Fourth Amendment”); [Gerstein v. Pugh](#), 420 U.S. 103, 111 (1975)(Noting “the standard for arrest is probable cause”); [United States v. Edwards](#), 242 F.3d 928, 933-34 (10th Cir. 2001) (“To be lawful, a warrantless arrest must be supported by probable cause to arrest”)(quotation omitted); [United States v. Cruz-Jimenez](#), 894 F.2d 1, 4 (1st Cir. 1990) (“All arrests ... are presumptively unreasonable unless supported by probable cause”).
2. **“Probable Cause” - Defined.** “Articulating precisely what ‘probable cause’ mean[s] is not possible.” [Ornelas v. United States](#), 517 U.S. 690, 695 (1996). Instead, “probable cause is a fluid concept - turning on the assessment of probabilities in particular factual contexts - not readily, or even usefully, reduced to a neat set of legal rules.” [Gates](#), 462 U.S. at 232. See also [Maryland v. Pringle](#), 540 U.S. 366, (2003)(“The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances”); [Texas v. Brown](#), 460 U.S. 730, 742 (1983)(Noting that “probable cause is a flexible, common-sense standard”). Nonetheless, the Supreme Court has noted that, “[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt,” and that the belief of guilt must be particularized with respect to the person to be searched or seized.” [Pringle](#), ___ U.S. at ___, 124 S. Ct. at 800. Accordingly, some basic definitions for probable cause to “arrest” or “search” have been formulated.
 - a. **Probable Cause to Search.** The Supreme Court has defined probable cause to search “as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” [Ornelas](#), 517 U.S. at 696 [citing [Brinegar v. United States](#), 338 U.S. 160 (1949)].
 - b. **Probable Cause to Arrest.** “The standard for arrest is probable cause, defined in terms of facts and circumstances ‘sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.’” [Gerstein](#), 420 U.S. at 111-112 [quoting [Beck v. Ohio](#), 379 U.S. 89, 91 (1964)]. See also [United States v. Hartje](#), 251 F.3d 771, 775 (8th Cir. 2001), cert. denied, 534 U.S. 1116 (2002)(“Probable cause to conduct a warrantless arrest exists when at the moment of arrest police have knowledge of facts and circumstances grounded in reasonably trustworthy information sufficient to warrant a belief by a prudent person that an offense has been or is being committed by the person to be arrested”); [United States v. Buckner](#), 179 F.3d 834, 837 (9th Cir. 1999)(“Probable cause exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [the defendant] had committed a crime”)(citation omitted).

3. **Probable Cause Must Be Based on Facts, Not Mere Conclusions.** “Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.” [Gates](#), 462 U.S. at 239. See, e.g., [United States v. Satterwhite](#), 980 F.2d 317, 321 (5th Cir. 1992)(“Bare bones’ affidavits contain wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause”); [United States v. Wilhelm](#), 80 F.3d 116, 119 (4th Cir. 1996)(same).
4. **The Test for Probable Cause is “Totality of the Circumstances.”** “Whether probable cause exists depends upon the totality of the circumstances, but it requires a showing of facts ‘sufficient to create a fair probability that evidence of a crime will be found in the place to be searched.’” [United States v. Gabrio](#), 295 F.3d 880, 885 (8th Cir.), cert. denied, 537 U.S. 962 (2002)(citing [Gates](#), 462 U.S. at 238). See also [United States v. Greene](#), 250 F.3d 471, 479 (6th Cir. 2001)(Noting “review of an affidavit and search warrant should rely on a ‘totality of the circumstances’ determination, rather than a line-by-line scrutiny”); [United States v. Montgomery](#), 377 F.3d 582, 590-92 (6th Cir. 2004)(Probable cause to arrest passenger in vehicle for possession with intent to distribute where officer observed a marijuana stem on the driver’s floorboard, a digital scale covered with green leafy material, and white powder was found hidden under the backseat armrest; court noted that, in a drug dealing enterprise, “guilty parties would not likely admit an innocent person into such a criminal enterprise for fear of that person furnishing incriminating evidence against them”); [United States v. Velazquez-Rivera](#), 366 F.3d 661, 664 (8th Cir. 2004)(Probable cause existed under totality of the circumstances based upon (a) the corroborated tip of a confidential informant; (b) suspects’ attempts to elude police by evasive driving; (c) one suspect’s discarding of clothing in an attempt to disguise himself; (d) one officer’s personal knowledge that drugs were traded at the target address; (e) suspects hurried into the target address while police were yelling for them to stop; (f) one suspect removed and threw away the memory chip to his cell phone; and (g) suspect threw keys to one apartment under the door of another while the police were forcing their way into the building).

NOTE: Students should be reminded that, in any probable cause determination, “[t]he focus is not on certitude, but, rather, on the likelihood of criminal activity.” [Acosta v. Ames Dep’t Stores, Inc.](#), 386 F.3d 5, 10 (1st Cir. 2004). “The probable cause standard does not require the officers’ conclusion to be ironclad, or even highly probable. Their conclusion that probable cause exists need only be reasonable.” [United States v. Winchenbach](#), 197 F.3d 548, 555-556 (1st Cir. 1999). See also [United States v. Trujillo](#), 376 F.3d 593, 603 (6th Cir. 2004)(Noting that “only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause”)(citation omitted).

5. **There Are Various Methods of Establishing Probable Cause.** A law enforcement officer may establish probable cause in any number of different ways. See, e.g., [United States v. Lattner](#), 385 F.3d 947, 952 (6th Cir. 2004)(Search warrant affidavit “contain[ed] several different kinds of information in the form of anonymous assertions, direct observations, corroboration of assertions, and valid inferences from circumstances,” which, taken together, established probable cause). This includes the following:

- a. **Direct Observations by Law Enforcement Officers May Establish Probable Cause.** Perhaps the easiest way to establish probable cause is through a law enforcement officer's direct observations. "Obviously, direct observation of [a criminal] offense during its commission ... constitutes probable cause." [United States v. Marshall](#), 463 F.2d 1211, 1212 (5th Cir. 1972)[citing [Draper v. United States](#), 358 U.S. 307 (1959)].
- b. **Probable Cause May Be Established Through Smell.** A law enforcement officer may use his sense of smell to establish probable cause, such as when he smells the odor of marijuana emanating from a vehicle or a person. See, e.g., [Gerard](#), 362 F.3d at 489 ("The Supreme Court recognizes that the odor of an illegal drug can be highly probative in establishing probable cause for a search. Circuits have held that the odor of marijuana, standing alone, is sufficient to support probable cause"); [United States v. Humphries](#), 372 F.3d 653, 658 (4th Cir. 2004)(Noting "the odor of marijuana alone can provide probable cause to believe that marijuana is present in a particular place"); [United States v. Zabalza](#), 346 F.3d 1255, 1259 (10th Cir. 2003)("This court has long recognized that marijuana has a distinct smell and that the odor of marijuana alone can satisfy the probable cause requirement to search a vehicle or baggage")(citation omitted); [United States v. Taylor](#), 162 F.3d 12, 21 (1st Cir. 1998)("When looking in, Officer Auger and Sergeant Kennedy immediately detected a 'strong odor' of marijuana. That observation provided probable cause for a search of the car for any narcotics").
- c. **Observations Made By "Fellow" Law Enforcement Officers May Establish Probable Cause.** "Under the 'fellow-officer' rule, law enforcement officials cooperating in an investigation are entitled to rely upon each other's knowledge of facts when forming the conclusion that a suspect has committed or is committing a crime." [United States v. Meade](#), 110 F.3d 190, 193 (1st Cir. 1997). See also [United States v. Ventresca](#), 380 U.S. 102, 111 (1965) ("Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number"); [Karr v. Smith](#), 774 F.2d 1029, 1031 (10th Cir. 1985)("Under the 'fellow officer' rule, 'probable cause is to be determined by the courts on the basis of the collective information of the police involved in the arrest, rather than exclusively on the extent of the knowledge of the particular officer who may actually make the arrest'"). Also referred to as "collective knowledge," "the fellow officer rule underlies the well-worn maxim that 'the collective knowledge and information of all the officers involved establishes probable cause for the arrest.'" [Meade](#), 110 F.3d at 194.

- d. **A Law Enforcement Officer's Training and Experience May Be Used to Establish Probable Cause.** In considering whether probable cause has been established, "the court issuing the warrant is entitled to rely on the training and experience of police officers." [United States v. Gil](#), 58 F.3d 1414, 1418 (9th Cir.), cert. denied, 516 U.S. 969 (1995). See also [United States v. Soule](#), 908 F.2d 1032, 1040 (1st Cir. 1990) ("The affidavit was prepared by a police officer whose experience and expertise provided the clerk magistrate with further reason to credit the representation in the warrant application"). However, in so doing, most courts require that there must be sufficient additional facts provided to support a determination of probable cause. See, e.g., [United States v. Schultz](#), 14 F.3d 1093, 1097 (6th Cir. 1994) (Holding that although the training and experience of a law enforcement officer may be considered in the determination of probable cause, "it cannot substitute for the lack of evidentiary nexus"); [United States v. Rios](#), 881 F. Supp. 772, 775 (D. Conn. 1995) (Holding that an affidavit containing a law enforcement officer's expert opinion but no facts to support an inference that evidence of the defendant's criminal activity would be found at his home did not provide a substantial basis for a finding of probable cause); [United States v. Gomez](#), 652 F. Supp. 461, 463 (E.D.N.Y. 1987) (Holding that although the issuing judge is entitled to "consider and credit" the expert opinion of a law enforcement officer, "it does not alone provide probable cause to search"). But see, e.g., [United States v. Thomas](#), 989 F.2d 1252, 1254 (D.C. Cir. 1993) (Finding probable cause to search the defendant's home based on his involvement in drug-dealing activities and law enforcement officer's opinion that drug dealers frequently keep evidence of their activities in their houses).
- e. **Information From a Drug-Sniffing Canine May Establish Probable Cause.** Probable cause may also be established through the use of a non-human source, such as a trained drug-sniffing dog. See, e.g., [United States v. Jacob](#), 377 F.3d 573, 580 n.5 (6th Cir. 2004) ("Once the drug detection dog alerted to the presence of drugs shortly after the stop, the investigators had probable cause to search the vehicle"); [Resendiz v. Miller](#), 203 F.3d 902, 903 (5th Cir. 2000) ("A drug-sniffing canine alert is sufficient, standing alone, to support probable cause for a search"); [United States v. Scarborough](#), 128 F.3d 1373, 1378 (10th Cir. 1997) ("It is undisputed that a drug sniffing dog's detection of contraband in itself establishes probable cause for a search warrant").
- 1). **The Dog Must Be Properly Trained.** Of course, the dog must be properly trained and suitably reliable for probable cause to be established based on the dog-sniff alone. See [United States v. Hill](#), 195 F.3d 258, 273 (6th Cir. 1999), cert. denied, 528 U.S. 1176 (2000) ("An alert by a properly-trained and reliable dog establishes probable cause sufficient to justify a warrantless search of a stopped vehicle; [United States v. Munroe](#), 143 F.3d 1113, 1116 (8th Cir. 1998) ("When the canine alerted, the officers then had probable cause to search the vehicle and did not need a search warrant under the automobile exception").

- 2) **The Failure of a Dog to Alert Does Not Automatically Mean Probable Cause is Lacking.** Additionally, even if the dog does not alert, this does not automatically mean that probable cause is lacking. “Drug-detecting dogs have not supplanted the neutral and detached magistrate as the arbiter of probable cause.” [United States v. Glover](#), 104 F.3d 1570, 1577 (10th Cir. 1997). As noted by one court: “Some contraband simply is not detectable by the drug dogs because only a relatively small quantity of narcotic is contained in the package, the drug is double packaged with plastic, or an odor masking substance such as coffee is used.” [Id.](#) at 1577 n.3.

NOTE: The following sections discuss establishing probable cause through hearsay information of various individuals, such as victims, witnesses, and informants. It goes without saying that “hearsay evidence may form the basis for a probable cause determination.” [United States v. Mathis](#), 357 F.3d 1200, 1204 (10th Cir. 2004). See also [Jones v. United States](#), 362 U.S. 257, 269 (1960) (“The question here is whether an affidavit which sets out personal observations relating to the existence of cause to search is to be deemed insufficient by virtue of the fact that it sets out not the affiant’s observations but those of another. An affidavit is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented”) (overruled on other grounds); [United States v. Helton](#), 314 F.3d 812, 819 (6th Cir. 2003) (“In evaluating whether probable cause exists for issuing a search warrant, a judicial officer may rely on hearsay evidence”); [United States v. Jordan](#), 999 F.2d 11, 13-14 (1st Cir. 1993) (“Hearsay statements ... often are the stuff of search warrant affidavits”); [United States v. Mitchell](#), 31 F.3d 271, 275 (5th Cir.), cert. denied, 513 U.S. 977 (1994) (“An affidavit may ... employ hearsay as long as it provides a ‘substantial basis for crediting the hearsay’”); Additionally, “multiple layers of hearsay may support a finding of probable cause for a search warrant.” [Mathis](#), 357 F.3d at 1204. In such a situation, each layer of hearsay must meet the test of reliability (veracity and basis of knowledge) discussed below. See, e.g., [United States v. Wylie](#), 705 F.2d 1388, 1390 (4th Cir. 1983) (“In affidavits containing two layers of hearsay, the same two-prong test [veracity and basis of knowledge] must be applied to each level of hearsay. However, double hearsay may satisfy the test”).

- f. **Information From Victims/Witnesses May Establish Probable Cause.** Probable cause may also be established based upon information provided by victims and/or witnesses. “When police officers obtain information from an eyewitness or victim establishing the elements of a crime, the information is almost always sufficient to provide probable cause for an arrest in the absence of evidence that the information, or the person providing it, is not credible.” [Pasiewicz v. Lake County Forest Pres. Dist.](#), 270 F.3d 520, 524 (7th Cir. 2001). See also [Forest v. Pawtucket Police Department](#), 377 F.3d 52, 57 (1st Cir. 2004)(“[P]olice officers can justifiably rely upon the credible complaint by a victim to support a finding of probable cause”); [United States v. Phillips](#), 727 F.2d 392, 397 (5th Cir. 1984)(“When an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case”). “The rationale for the victim or bystander exception is that the statements of such eyewitnesses will presumably be based on their own observations and thus are not likely to reflect ‘idle rumor or irresponsible conjecture.’” [Phillips](#), 727 at 397. “Whereas other informants, who often are ‘intimately involved with the persons informed upon and with the illegal conduct at hand,’ may have personal reasons for giving shaded or otherwise inaccurate information to law enforcement officials, such is not true of bystanders or eyewitness-victims who have no connection with the accused.” [United States v. Flynn](#), 664 F.2d 1296, 1302-03 (5th Cir.), cert. denied, 456 U.S. 930 (1982). See also [United States v. Schaefer](#), 87 F.3d 562, 566 (1st Cir. 1996)(Court noted information obtained from neighbors “enjoy[ed] special stature since information provided by ordinary citizens has particular value in the probable cause equation”). Finally, “[v]ictims’ complaints are a prime source of investigatory information for police officers. In the absence of circumstances that would raise a reasonably prudent officer’s antennae, there is no requirement that the officer corroborate every aspect of every complaint with extrinsic information.” [Acosta](#), 386 F.3d at 10.
- g. **Information From Confidential Informants May Be Used to Establish Probable Cause.** “The use of confidential informants in criminal investigations is commonplace.” [Schaefer](#), 87 F.3d at 566. In fact, the use of confidential informants “has been characterized as a necessary part of police work.” [Id.](#) However, “[w]hen confronted with hearsay information from a confidential informant or an anonymous tipster, a court must consider the veracity, reliability, and the basis of knowledge for that information as part of the totality of the circumstances for evaluating the impact of that information.” [United States v. Helton](#), 314 F.3d 812, 819 (6th Cir. 2003). See also [United States v. Oliva](#), 385 F.3d 1111, 1114 (7th Cir. 2004)(“An informant’s tip, if reliable, is considered trustworthy information”); [United States v. Lucca](#), 377 F.3d 927, 933 (8th Cir. 2004)(“When a confidential informant provides information in support of a search warrant, the issuing magistrate considers the informant’s reliability and the basis of knowledge”).

- 1) **The Two-Prong Aguilar Test for Confidential Informants.** In Aguilar v. Texas, 378 U.S. 108 (1964), the Supreme Court outlined a two-prong test for determining whether information provided by a confidential informant established probable cause. The two prongs of the "Aguilar Test" revolve around (1) the credibility of the informant and (2) the informant's basis of knowledge. Of course, "[t]he totality of the circumstances analysis ... does not mandate that both factors be present before a warrant may issue." Lucca, 377 F.3d at 933. "Instead, a strong showing of one may compensate for a deficiency in the other." Id.
 - a) **Credibility of Source.** Under this prong of the Aguilar test, "facts must be brought before the judicial officer so that he may determine either the inherent credibility of the informant or the reliability of his information on this particular occasion." 2 W. LaFave, *Search and Seizure* § 3.3(a), p. 91 (3d ed. 1996). Stated differently, a court must "consider the informant's information - in amount and in degree of reliability - and the degree of corroboration of that information by the officers." United States v. Navarro, 90 F.3d 1245, 1253 (7th Cir. 1996). Establishing the credibility of a confidential informant can be done in a variety of ways.
 - (1) **Proven Track Record.** An informant's tip can be sufficient to establish probable cause if the informant "has a track record of supplying reliable information." United States v. Williams, 10 F.3d 590, 593 (9th Cir. 1993). See, e.g., United States v. Harris, 403 U.S. 573, 583 (1971) ("We cannot conclude that a policeman's knowledge of a suspect's reputation ... is not a "practical consideration of everyday life" upon which an officer (or a magistrate) may properly rely in assessing the reliability of an informant's tip"); United States v. Hodge, 354 F.3d 305, 311 (4th Cir. 2004) (Noting "a proven, reliable informant is entitled to far more credence than an unknown, anonymous tipster"); United States v. Warren, 42 F.3d 647, 652 (D.C. Cir. 1994) ("One of the ways in which reliability of a tip can be substantiated in one respect is by showing that the informant has proven credible in other instances"); United States v. Bynum, 293 F.3d 192, 203 (4th Cir. 2002) (Noting "courts have uniformly held that an informant's veracity is adequately established when the affiant asserts that the informant has supplied information leading to arrests and convictions"). Reference to specific facts in the affidavit can enhance an informant's credibility based on his prior track record.

- (2) **Declarations Against Penal Interest.** “The fact that an informant's statements are against his or her penal interest adds credibility to the informant's report.” [United States v. Schaefer](#), 87 F.3d 562, 566 (1st Cir. 1996). As noted by the Supreme Court: “People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility - sufficient at least to support a finding of probable cause to search.” [Harris](#), 403 U.S. at 583. See also [United States v. Ketzeback](#), 358 F.3d 987, 991 (8th Cir. 2004)(Reliability of CI exhibited where he “implicated himself in drug activity while in custody on entirely unrelated and relatively minor charges”); [United States v. Soriano](#), 346 F.3d 963, 972 (9th Cir. 2003) (“When considering reliability, the courts may employ a number of methods to determine if an informant’s information is reliable. It may be demonstrated ... by admission against penal interest, for example”). (internal quotation marks and citation omitted); [United States v. Fields](#), 72 F.3d 1200, 1215 (5th Cir.), cert. denied, 519 U.S. 807 (1996)(Credibility of informant established where, *inter alia*, they “also implicated themselves in illegal drug activities and made admissions against penal interest”); [Turner v. Caspari](#), 38 F.3d 388, 393 (8th Cir. 1994)(same); [Gabrio](#), 295 F.3d at 885 (Reliability established where “affidavit stated that the informant had provided reliable information on at least two prior occasions and had returned stolen property to law enforcement officers”).

(3) **Corroboration of the Informant's Information.** "When there is sufficient independent corroboration of an informant's information, there is no need to establish the veracity of the informant." [United States v. Danhauer](#), 229 F.3d 1002, 1006 (10th Cir. 2000). See also [Ganser](#), 315 F.3d at 843 ("If an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity")(internal quotations omitted); [United States v. Nielsen](#), 371 F.3d 574, 580 (9th Cir. 2004)(Informant information found reliable where officer "corroborated certain factual details contained in the informants' statements"); [United States v. Formaro](#), 152 F.3d 768, 770 (8th Cir. 1998) ("Corroboration of the [confidential informant's] information by independent investigation is an important factor in the calculus of probable cause"); [United States v. Khounsavanh](#), 113 F.3d 279, 284 (1st Cir. 1997)(Court noted that among the factors to be considered in determining whether probable cause existed included "whether some or all the informant's factual statements were corroborated wherever reasonable and practicable (e.g., through police surveillance"); [U.S. v. Williams](#), 477 F.3d 554 (8th Cir. 2007) (holding that probable cause was not defeated by failure to mention informant's criminal history if information is at least partially corroborated or informant's reliability otherwise established, such as with a proven track record).

(4) **++ Corroboration – Illustrative Case.** [U.S. v Thomas](#), 605 F.3d 300 (6th Cir. 2010.) This opinion in a marijuana-grown-in-a-trailer case contains a verbatim search warrant affidavit which provides good illustrations of: [1] A barely-adequate track record recitation to support the credibility of a confidential informant; [2] corroboration of the credibility of the informant and his allegations using, among other things, electricity usage records; and [3] overcoming staleness of informant's basis-of-knowledge [most recent information was about eight months before the affidavit was prepared] using more electricity usage records to show continuing high consumption of electricity for grow lights.

- (5) **Direct Observations by the Informant.** “First-hand observations by a CI support a finding of reliability.” [United States v. Johnson](#), 289 F.3d 1034, 1039 (7th Cir. 2002). See, e.g., [Gates](#), 462 U.S. at 234 (“Even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed **first hand**, entitles his tip to greater weight than might otherwise be the case”)(emphasis added); [Harris](#), 403 U.S. at 581 (Reliability of informant found because, *inter alia*, affidavits “purport to relate the personal observations of the informant”); [Nielsen](#), 371 F.3d at 580 (Informant information considered more reliable where all informants “stated they had firsthand knowledge” of defendant’s drug trafficking “based on their earlier methamphetamine buys”); [United States v. Taylor](#), 985 F.2d 3, 6 (1st Cir.), cert. denied, 508 U.S. 944 (1993)(“The affidavit may disclose an adequate basis for evaluating the informant's veracity through the very specificity and detail with which it relates the informant's first-hand description of the place to be searched or the items to be seized”); [United States v. Cochrane](#), 896 F.2d 635, 641 (1st Cir.), cert. denied, 496 U.S. 929 (1990)(“An important indicia of reliability is the fact that the informant's knowledge was based upon personal observation”).
- (6) **Informant’s Presence Before the Magistrate Judge.** “When a [confidential informant] accompanies the officer and is available to give testimony before the judge issuing the warrant, his presence adds to the reliability of the information used to obtain the warrant, because it provides the judge with an opportunity to assess the informant's credibility and allay any concerns he might have had about the veracity of the informant's statements.” [Johnson](#), 289 F.3d at 1040. See also [United States v. Lloyd](#), 71 F.3d 1256, 1262 (7th Cir. 1995)(same), cert. denied, 517 U.S. 1250 (1996).
- (7) **Face-to-Face Meeting Between Officer and Informant.** Whether the information was provided by the informant in a face-to-face encounter with the affiant can be considered in determining the informant's reliability. See, e.g., [Gabrio](#), 295 F.3d at 885 (Noting that, among the factors to consider in determining informant's reliability was the affiant's opportunity “to assess the informant's credibility because he gave his tip in person”); [United States v. Robertson](#), 39 F.3d 891, 893 (8th Cir. 1994), cert. denied, 514 U.S. 1090 (1995)(Reliability of informant established, in part, because affiant was “allowed ... to question the informant face-to-face and to determine whether he or she appeared to be a credible person. That first-hand observation gives greater weight to [affiant's] decision to rely on the informant's information”).

- (8) **Consistency Between Independent Informants.** “Courts often have held that consistency between the reports of two independent informants helps to validate both accounts.”. [Schaefer](#), 87 F.3d at 566. See also [Nielsen](#), 371 F.3d at 580 (Court noted “the veracity of [the informants] is buttressed by the similarity of their accounts”); [United States v. Oropesa](#), 316 F.3d 762, 768 (8th Cir. 2003)(“Not only had Brooks proved to be a reliable informant, as evidenced by the arrest of Brooks' second drug source just two weeks earlier, two other informants corroborated Brooks' information that Oropesa sold drugs out of his home and automotive shop”); ([United States v. Fields](#), 72 F.3d 1200, 1214 (5th Cir.), cert. denied, 519 U.S. 807 (1996)(“Each informant gave information to the police independent of the other informants, and each one's information corroborate the others”); [United States v. Thao Dinh Le](#), 173 F.3d 1258, 1266 (10th Cir. 1998)(Probable cause found where, *inter alia*, “the affidavit contained information provided by two different informants whose stories were remarkably consistent”); [United States v. Pritchard](#), 745 F.2d 1112, 1121 (7th Cir. 1984)(“By telling consistent yet independent stories, the informants provide 'cross-corroboration,' and enhance the reliability of the application as a whole”).
- (9) **The Degree of Detail Given By the Informant.** The degree of detail given by an informant may also be considered in determining the veracity of an informant's tip. See, e.g., [United States v. Koerth](#), 312 F.3d 862, 866 (7th Cir. 2002), cert. denied, 538 U.S. 1020 (2003); [United States v. Padro](#), 52 F.3d 120, 123 (6th Cir. 1995). (“The richness of detail provided by an informant increases the reliability of the information”).
- (10) **Any Personal Interest of the Informant.** An informant's “personal interest can create a ‘strong motive to supply accurate information’” to law enforcement officers. [United States v. DeQuasie](#), 373 F.3d 509, 523 (4th Cir. 2004). See also [United States v. Perez](#), 393 F.3d 457, 462 (4th Cir. 2004)(Noting that informant's statement “reflected his personal concern for his girlfriend's well-being, which we have found to be another indication of an informant's credibility”).
- (11) **9-1-1 calls.** If an anonymous 9-1-1 caller's information establishes a reasonable belief that someone is in imminent peril, there is no requirement to establish the caller's identity or reliability before acting on the information. [U.S. v. Elder](#), 466 F.3d 1090 (7th Cir. 2006).

- b) **Basis of Knowledge.** In addition to the “credibility of source,” “under [Aguilar](#), the ‘basis of knowledge’ prong also needed to be satisfied.” 2 W. LaFare, *Search and Seizure* § 3.3(a), p. 92 (3d ed. 1996). “It is critical to a showing of probable cause that the affidavit state facts sufficient to justify a conclusion that evidence or contraband will probably be found at the premises to be searched.” [United States v. Hove](#), 848 F.2d 137, 140 (9th Cir. 1988). “In determining whether an affidavit based upon an informant’s tips provides a substantial basis for a finding of probable cause, ‘an explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles [the informant’s] tip to greater weight than might otherwise be the case.’” [United States v. Sonagere](#), 30 F.3d 51, 53 (6th Cir. 1994)(quoting [Gates](#), 462 U.S. at 234). See also [Johnson](#), 289 F.3d at 1039 (Where the confidential informant had direct observation of the defendant’s criminal activity, this “established the [informant’s] basis of knowledge”). In essence, the “basis of knowledge” prong requires the government to provide sufficient information to show the informant knows who is involved in the criminal activity, what criminal activity is taking place, where and when the criminal activity is taking place, and how the informant became aware of this information. See, e.g., [United States v. Bishop](#), 264 F.3d 919, 925 (9th Cir. 2001) (“When considering the basis of knowledge, courts look for how the informant came by his or her knowledge”)(internal quotation marks and citation omitted).
- 2) **Aguilar and Gates.** In [Gates](#), the two-part [Aguilar](#) test (outlined above) was rejected by the Supreme Court as “hypertechnical and divorced from ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” [Massachusetts v. Upton](#), 466 U.S. 727, 732 (1984)(citation omitted). Instead, the Court adopted a “totality of the circumstances” approach to determining probable cause. “The phrase means simply that the court considers all data relevant to the probability of a crime being committed, without having to satisfy the two independent requirements (or proverbial “prongs”) of the [Aguilar](#) test” [United States v. Riley](#), 351 F.3d 1265, 1267 (D.C. Cir. 2003). However, while “[Gates](#) replaced the two-pronged framework of [Aguilar](#) ... with the totality of the circumstances test,” [Khounsavanh](#), 113 F.3d at 283, “the [Gates](#) Court agreed that the [Aguilar](#) ... factors, including ‘an informant’s ‘veracity,’ ‘reliability’ and ‘basis of knowledge’ are all highly relevant in determining the value of his report.” [Id.](#) at 284 (citation omitted).

6. **Duty to Investigate Once Probable Cause is Established.** “Probable cause determinations are, virtually by definition, preliminary and tentative.” [Acosta](#), 386 F.3d at 11. For this reason, “the Supreme Court has flatly rejected the idea that the police have a standing obligation to investigate potential defenses before finding probable cause.” *Id.* Thus, as a general rule, “[o]nce a police officer discovers sufficient facts to establish probable cause, she has no constitutional obligation to conduct any further investigation in the hope of discovering exculpatory evidence.” [Hodgkins v. Peterson](#), 355 F.3d 1048, 1061 (7th Cir. 2004). See also [Brodnicki v. City of Omaha](#), 75 F.3d 1261, 1264 (8th Cir.), cert. denied, 519 U.S. 867 (1996) (“The officers were not required to conduct a mini-trial before arresting Brodnicki”). Thus, while a police officer may not ignore conclusively established evidence of the existence of an affirmative defense, [Estate of Dietrich v. Burrows](#), 167 F.3d 1007, 1012 (6th Cir. 1999), the officer has no duty to investigate the validity of any defense. [Baker v. McCollan](#), 443 U.S. 137, 145-46 (1979).

F. EPO #6: IDENTIFY THE ORIGIN, PURPOSE AND SCOPE OF THE EXCLUSIONARY RULE

1. **General Rule – Evidence Obtained in Violation of the Fourth Amendment is Generally Inadmissible at Trial.** The Supreme Court has long recognized that “the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands.” [Arizona v. Evans](#), 514 U.S. 1, 10 (1995). Instead, the Court has developed the “exclusionary rule,” which “operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule’s general deterrent effect.” *Id.* See also [United States v. Leon](#), 468 U.S. 897, 906 (1984); [United States v. Calandra](#), 414 U.S. 338, 354 (1974).
2. **The Purpose of the Rule is to Deter Police Misconduct.** Historically, “the exclusionary rule [was] designed to deter police misconduct...” [Leon](#), 468 U.S. at 916. See also [Elkins v. United States](#), 364 U.S. 206, 217 (1960) (“Its purpose is to deter - to compel respect for the constitutional guaranty in the only effectively available way - by removing the incentive to disregard it”); [United States v. Johnson](#), 364 F.3d 1185, 1190 (10th Cir. 2004) (“The purpose of the Fourth Amendment and the associated exclusionary rule is not to grant certain guilty defendants a windfall by letting them go free - though it sometimes does do that. The objective is rather to protect *all* citizens, particularly the innocent, by deterring overzealous police behavior”)(emphasis in original); [United States v. Merritt](#), 361 F.3d 1005, 1009 (7th Cir. 2004) (“The exclusionary rule has such a deterrent effect when, by punishing behavior which violates a citizen’s Fourth Amendment rights and removing the incentive for its repetition, it alters the behavior of individual law-enforcement officers or the policies of their departments”)(internal citations and quotations omitted); [Sanna v. Dipaolo](#), 265 F.3d 1, 7 (1st Cir. 2001)(Noting that, “the exclusion of the evidence derived, directly or indirectly, from [a Fourth Amendment] violation ... is designed to deter law enforcement personnel from disregarding constitutional mandates”).
3. **Historical Development of the Rule**

- a. [Weeks v. United States](#), 232 U.S. 383 (1914). In [Weeks](#), the Supreme Court first adopted the exclusionary rule for violations of the Fourth Amendment. The rationale for the rule's adoption was simple: In cases where illegally seized evidence "can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution." However, at this point in history, the exclusionary rule applied only to federal law enforcement officers. It did not apply to illegal searches by state law enforcement personnel. This anomaly resulted in what was known as the "silver platter doctrine," in which state law enforcement officers could turn over illegally obtained evidence to federal authorities for use in federal prosecutions. The Supreme Court later abolished the "silver platter doctrine" in [Elkins v. United States](#), 364 U.S. 206 (1960).
 - b. [Mapp v. Ohio](#), 367 U.S. 643 (1961). In [Mapp](#), the Supreme Court, by means of the Due Process Clause of the Fourteenth Amendment, imposed the exclusionary rule of the Fourth Amendment on the states. As stated by the Court, the exclusionary rule was applicable to the states and "is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause." *Id.* at 660.
 - c. [Silverthorne Lumber Co. v. United States](#), 251 U.S. 385 (1920). In [Silverthorne](#), the Supreme Court established the "fruit of the poisonous tree" doctrine. This doctrine generally prohibits using illegally seized evidence as a means of obtaining still more evidence. Here, after recognizing that certain documents had been obtained in an unconstitutional manner, the prosecuting attorney directed that they be returned to the company. Before returning them, however, photographs were taken. The prosecuting attorney then issued a subpoena for the production of the documents, using the photographs for as the basis. In sum, the Court held:

"The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed." *Id.* at 392.
4. **A Defendant Must Make Two (2) Showings to Benefit From Application of the Exclusionary Rule.** "A party seeking exclusion of evidence on Fourth Amendment grounds must demonstrate both actual police misconduct that violated the defendant's Fourth Amendment rights, and that the evidence to be excluded was in a fact a product of the police misconduct." [United States v. Williams](#), 356 F.3d 1268, 1272 (10th Cir. 2004).

G. **EPO #7: IDENTIFY EXCEPTIONS TO THE EXCLUSIONARY RULE, E.G., NO STANDING TO OBJECT, GOOD FAITH, INEVITABLE DISCOVERY, AND IMPEACHMENT**

1. ++ Instructor Note: UPTP and IPOTP receive little instruction in the search warrant EPO's. To avoid placing examination questions in an unfamiliar context for these two programs and then requiring their students to apply the information in an unfamiliar context, separate examination questions have been written for UPTP and IPOTP. These questions require that the students apply the principles of EPO 7 [exceptions to the exclusionary rule] and EPO 18 [plain view seizure] in contexts that will arise in the ordinary course of their duties consistent with instruction constrained to those expectations.
2. **Evidence Obtained in Violation of the Fourth Amendment May Be Admissible Against a Defendant in Certain Circumstances.** "Despite its broad deterrent purpose, the exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons." [United States v. Calandra](#), 414 U.S. 338, 348 (1974).
3. **There Are a Variety of Exceptions to the Exclusionary Rule.** Listed below are some of the more common exceptions to the exclusionary rule.
 - a. **Evidence Will Be Admissible if the Defendant Has No Standing to Object.** "The Fourth Amendment is 'a personal right that must be invoked by an individual.'" [Minnesota v. Carter](#), 525 U.S. 83, 88 (1998). "In order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable." [Id.](#) at 88. Thus, "only defendants whose Fourth Amendment rights have been violated [may] benefit from the [exclusionary] rule's protections." [Rakas v. Illinois](#), 439 U.S. 128, 134 (1978). See also [Rawlings v. Kentucky](#), 448 U.S. 98, 106 (1980) (Finding that defendant lacked standing to object to a search of a friend's purse because he "had no legitimate expectation of privacy in [the] purse at the time of the search"); [Rakas](#), 439 U.S. at 140 ("The question is whether the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it"); and [United States v. Salvucci](#), 448 U.S. 83, 93 (1980); (Court noted that key issue when discussing standing was "whether [the defendant] had an expectation of privacy in the area searched"). ++ [US. v Marquez](#), 605 F.3d 604 (8th Cir. 2010) (Occasional passenger lacks standing to object to installation and use of GPS tracker on car he did not own or drive)/
 - b. **Evidence May Be Admissible to Impeach the Defendant.** The Supreme Court has repeatedly held that "when defendants testify, they must testify truthfully or suffer the consequences." [United States v. Havens](#), 446 U.S. 620, 626 (1980). Where a defendant takes the witness stand and testifies falsely, the government may cross-examine the defendant and impeach him with evidence that was obtained in violation of the Fourth Amendment. Were it otherwise, "the defendant's constitutional shield against having illegally seized evidence used against him could be 'perverted into a license to use perjury by way of a defense.'" [Id.](#) "The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him." [Michelson v. United States](#), 335 U.S. 469, 479 (1948). Under the impeachment exception, illegally obtained evidence can be used to impeach:

- 1) **Any testimony given by a defendant on direct examination, [Walder v. United States](#), 347 U.S. 62 (1954); or**
 - 2) **A defendant's statements made in response to proper cross-examination reasonably suggested by the defendant's direct examination, [United States v. Havens](#), 446 U.S. 620, 627 (1980).**
- c. However, suppressed evidence may only be used to impeach the defendant's testimony. This exception has not been expanded to allow impeachment of other defense witnesses with illegally seized evidence. [James v. Illinois](#), 493 U.S. 307 (1990). Thus, if the defendant elects not to take the witness stand, the impeachment exception is inapplicable.
- d. **Evidence Obtained in Good Faith Reliance Upon a Search Warrant May Be Admissible.** As a general rule, a law enforcement officer is not expected to question a probable cause determination made by a magistrate. [United States v. Krull](#), 480 U.S. 340, 349 (1987). Instead, "a magistrate's determination of probable cause is to be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the magistrate could reasonably conclude that the items sought to be seized are associated with the crime and located in the place indicated." [United States v. Spry](#), 190 F.3d 829, 835 (7th Cir. 1999)(internal quotations omitted), cert. denied, 528 U.S. 1130 (2000). In [United States v. Leon](#), 468 U.S. 897 (1984), the Supreme Court carved out a "good faith" exception to the exclusionary rule based on the premises outlined above.
- 1) **General Rule – Where An Officer Relies in Good Faith on a Warrant Issued by a Neutral and Detached Magistrate, Evidence Obtained Will Be Admissible.** In sum, the "good faith" exception provides that, if a neutral and detached judicial officer erroneously issues a search warrant (and, presumably, an arrest warrant) based upon what is reasonably believed to be probable cause, law enforcement officers may still retain the fruits of the search and/or seizure. See, e.g., [United States v. Scroggins](#), 361 F.3d 1075, 1084 (8th Cir. 2004)("The good-faith exception is perfectly suited for cases ... when the judge's decision was borderline"); [United States v. Ricciardelli](#), 998 F.2d 8, 15 (1st Cir. 1993)("If ... the warrant's defectiveness results from mere technical errors, bevues by the magistrate not readily evident to a competent officer, or borderline calls about the existence of probable cause, then the evidence may be used, despite the warrant's defectiveness").
 - a) **Rationale Behind the "Good Faith" Exception.** In [Leon](#), the Court announced three (3) separate rationale's underlying the adoption of a "good faith" exception to the exclusionary rule.
 - (1) **Exclusionary Rule is to Deter Police, Rather Than Judges.** "First, the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates." [Id.](#) at 916.

- (2) **No Evidence Exclusionary Rule Should Apply Where Judges are Mistaken.** “Second, there exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion.” [Id.](#)
- (3) **Application of the Rule Will Not Have a Significant Deterrent Effect on Judges.** “Third, and most important, ... [there] is no basis for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate.” [Id.](#)

See also [United States v. Carpenter](#), 341 F.3d 666, 669 (8th Cir. 2003)(In creating a “good faith” exception, “the Court drew a clear distinction between the motivations of detached, neutral magistrates and those of partisan enforcement officers who are ‘engaged in the often competitive enterprise of ferreting out crime’”(quoting [Leon](#), 468 U.S. at 914); [United States v. Capozzi](#), 347 F.3d 327, 332 (1st Cir. 2003), cert. denied, 540 U.S. 1168, 124 S. Ct. 1187 (2004)(“The [Supreme] Court recognized that the purpose of this exclusionary rule is to deter police misconduct; therefore, it declined to apply the rule in circumstances where an officer acts in good faith to obtain a warrant because suppression in such instances does not ‘logically contribute to the deterrence of Fourth Amendment violations’”(citation omitted)).

- b) **The “Good Faith” Exception Has Limitations.** However, the “good faith” exception is not without limits. See, e.g., [United States v. Payne](#), 341 F.3d 393, 399-400 (5th Cir. 2003); [Capozzi](#), 347 F.3d at 332 (Noting that, “while [Leon](#) restricts the application of the exclusionary rule, it does not eliminate it”); [United States v. Goody](#), 377 F.3d 834, 837 (8th Cir. 2004)(Noting that “good faith is not a magic lamp for police officers to rub whenever they find themselves in trouble,” and that “the exception is inapplicable in certain circumstances”)(internal citations and quotation marks omitted). Specifically, in [Leon](#), “the Court provided detailed guidance to define those limited situations in which reliance on a warrant could not justify suspension of the ‘extreme sanction of exclusion.’” [Carpenter](#), 341 F.3d at 669. The exception will not apply if any of the following four circumstances.

- (1) **If the Affidavit Contained False or Misleading Information, the Good Faith Exception Will Not Apply.** First, “suppression ... remains an appropriate remedy. If the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.” [Leon](#), 468 U.S. at 923 [citing [Franks v. Delaware](#), 438 U.S. 154 (1978)]. This issue is discussed more fully in **EPO # 13**.
- (2) **If the Magistrate Judge Whom Issued the Warrant was Not Neutral and Detached, the Good Faith Exception Will Not Apply.** Second, “the exception ... will also not apply in cases where the issuing magistrate wholly abandoned his judicial role ...; in such circumstances, no reasonably well trained officer should rely on the warrant.” [Leon](#), 468 U.S. at 923. See also [Carpenter](#), 341 F.3d at 670 (“In such a case, the issuing magistrate does not serve as a neutral and detached actor, but rather as a ‘rubber stamp for the police’ and ‘an adjunct law enforcement officer’”)(quoting [Leon](#), 468 U.S. at 914); [United States v. Koerth](#), 312 F.3d 862, 868 (7th Cir. 2002), cert. denied, 538 U.S. 1020 (2003)(“An officer may not rely upon a search warrant if he is aware or had reason to believe that the magistrate improperly issued the warrant without meaningfully and critically evaluating the evidence presented at the probable cause hearing”).
- (3) **Where the Warrant Clearly Lacks Probable Cause, the Good Faith Exception Will Not Apply.** “Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’” [Leon](#), 468 U.S. at 923.

- (4) **The Good Faith Exception Will Apply to Erroneous Arrest Records.** When an arrest is made based on a law enforcement officer's reasonable reliance upon erroneous computer arrest records, the "good faith" exception will apply to any evidence seized during search incident to arrest. [Arizona v. Evans](#), 514 U.S. 1 (1995). To suppress the evidence in such circumstances would not further the deterrent purpose of the exclusionary rule: "Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, they have no stake in the outcome of particular criminal prosecutions. The threat of exclusion of evidence could not be expected to deter such individuals from failing to inform police officials that a warrant had been quashed." [Id.](#) at 15 (citations omitted). *** INSTRUCTOR NOTE [NEED NOT BE TAUGHT]: This aspect of the good faith exception has been extended to cover isolated errors in databases maintained by law enforcement officers. [United States v. Herring](#), 129 S. Ct. 695; 2009 U.S. LEXIS 581 (2009). In that case, Herring was convicted of possessing contraband discovered during a search incident to his arrest. The arrest was made based on an adjoining county sheriff's report that they had an outstanding arrest warrant for Herring. After the search had produced contraband, the arresting officers discovered the law enforcement database entry was wrong. The Court held that this kind of isolated negligence did not mandate exclusion. However, the Court was careful to note, "We do not suggest that all recordkeeping errors by the police are immune from the exclusionary rule.... If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified." 129 S.Ct. at 703. Many commentators suggest that this case signals further contraction of the exclusionary rule on the horizon.

- e. **Evidence Obtained During a Foreign Search May Be Admissible.** As a general rule, "the Fourth Amendment and the exclusionary rule do not ordinarily apply to foreign searches and seizures." [United States v. Mitro](#), 880 F.2d 1480, 1482 (1st Cir. 1989). See also [United States v. Janis](#), 428 U.S. 433, 456 n.31. (1976) ("It is well established, of course, that the exclusionary rule, as a deterrent sanction, is not applicable where ... a foreign government commits the offending act"). Nevertheless, "[f]or United States citizens and resident aliens, the Fourth Amendment applies to foreign searches and seizures: (1) conducted exclusively by the United States government, (2) conducted by the United States in a "joint venture" with foreign authorities, or (3) where foreign authorities act as agents for the United States." *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1116 (March 2004).

- 1) **Searches By Foreign Authorities.** “The Fourth Amendment exclusionary rule does not apply to foreign searches by foreign officials in enforcement of foreign law, even if those from whom evidence is seized are American citizens.” [United States v. Rose](#), 570 F.2d 1358, 1361 (9th Cir. 1978). See also [United States v. Behety](#), 32 F.3d 503, 510 (11th Cir. 1994), cert. denied, 515 U.S. 1137 (1995) (“Evidence obtained by foreign police officials from searches conducted in their country is generally admissible in federal court regardless of whether the search complied with the Fourth Amendment”). Accordingly, “[t]he ‘exclusionary rule’ does not require the suppression of evidence seized by foreign police agents, for the actions of an American court are unlikely to influence the conduct of foreign police.” [United States v. Hensel](#), 699 F.2d 18, 25 (1st Cir.), cert. denied, 461 U.S. 958 (1983). See also [Stonehill v. United States](#), 405 F.2d 738, 743 (9th Cir. 1968), cert denied, 395 U.S. 960, reh’g denied, 396 U.S. 870 (1969) (“Neither the Fourth Amendment of the United States Constitution nor the exclusionary rule of evidence, designed to deter Federal officers from violating the Fourth Amendment, is applicable to the acts of foreign officials”); [United States v. Barona](#), 56 F.3d 1087, 1091 (9th Cir. 1995)(Same). However, there “are two well-established exceptions to this rule: (1) where foreign police conduct ‘shock[s] the judicial conscience,’ and (2) where American agents ‘participated in the foreign search, or . . . [the foreign officers acted] as agents for their American counterparts.’” [Hensel](#), 699 F.2d at 25 (internal quotations and citations omitted).
- a) **Conduct That “Shocks the Conscience.”** Based upon their inherent supervisory powers, as well as the Due Process Clause, a Federal court “may suppress any foreign search evidence obtained by methods that “shock the conscience.” *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1120. See also [Barona](#), 56 F.3d. at 1092 (“This type of exclusion is not based on our Fourth Amendment jurisprudence, but rather on the recognition that we may employ our supervisory powers when absolutely necessary to preserve the integrity of the criminal justice system”). “Only conduct on the part of the foreign police that shocks the judicial conscience could warrant the suppression of foreign-seized evidence. Circumstances that will shock the conscience are limited to conduct that ‘not only violates U.S. notions of due process, but also violates fundamental international norms of decency.’” [Mitro](#), 880 F.2d at 1483, 1484 (internal footnote omitted).

NOTE: “[T]here is some debate as to whether a federal court has the authority to exclude evidence seized by foreign officials even in circumstances that shock the judicial conscience in light of [United States v. Payner](#), 447 U.S. 727 (1980), where the Supreme Court held that a federal court could not exclude evidence under its supervisory power where the defendant would not have standing to seek exclusion under the Fourth Amendment.” [Mitro](#), 880 F.2d at 1484 n.4.

- b) **Instrument/Agent or Participation.** “The second exception to the inapplicability of the exclusionary rule applies when United States agents' participation in the investigation is so substantial that the action is a joint venture between United States and foreign officials.” [Barona](#), 56 F.3d at 1092 (citation and internal quotation marks omitted).
- (1) **Joint Venture.** The Fourth Amendment will apply if “American participation in the foreign search or seizure rendered the acts a joint venture.” P. Joseph, *Warrantless Search Law Deskbook* § 5.5, p. 5-16.3 (2000). See [Stonehill](#), 405 F.2d at 743 (“The Fourth Amendment could apply to raids by foreign officials only if Federal agents so substantially participated in the raids so as to convert them into joint ventures between the United States and the foreign officials”); [United States v. Mount](#), 757 F.2d 1315, 1318 (D.C. Cir. 1985)(Collecting cases and noting “the exclusionary rule does apply to a foreign search if American officials or officers participated in some significant way, for in such a situation the deterrence principle may be deemed to operate”).

NOTE: Whether the participation of Federal law enforcement officers renders a search a “joint venture” must be “determined by a thorough examination of the facts of each case.” [Stonehill](#), 405 F.2d at 745. However, simply “providing information to a foreign functionary is not sufficient involvement for the Government to be considered a participant in acts the foreign functionary takes based on that information.” [United States v. Marzano](#), 537 F.2d 257, 270 (7th Cir. 1976) (Collecting cases). Further, the “mere presence of federal officers is not sufficient to make the officers participants.” *Id.* See also [Stonehill](#), 405 F.2d at 745; [United States v. Rosenthal](#), 793 F.3d 1214, 1231 (11th Cir. 1986), *cert. denied*, 480 U.S. 919 (1987)(“Fourth Amendment rights are generally inapplicable to an action by a foreign sovereign in its own territory in enforcing its own laws, even though American officials are present and cooperate in some degree”); [United States v. Johnson](#), 451 F.2d 1321 (4th Cir. 1971), *cert. denied*, 405 U.S. 1018 (1972).

- (2) **Instrument or Agent.** The mandates of the Fourth Amendment will also apply if “the foreign official was acting as an instrument or agent of an American government official” P. Joseph, *Warrantless Search Law Deskbook* § 5.5, p. 5-16.3 (2000).

- 2) **Searches of Non-Resident Aliens By American Law Enforcement Officers.** In [United States v. Verdugo-Urquidez](#), 494 U.S. 259 (1990), the Supreme Court addressed the issue of “whether the Fourth Amendment applies to the search and seizure by United States agents of property that is owned by a nonresident alien and located in a foreign country.” [Id.](#) at 261. In sum, the court answered this question in the negative, holding that “the purpose of the Fourth Amendment was to protect the people of the United States against arbitrary action by their own Government; it was never suggested that the provision was intended to restrain the actions of the Federal Government against aliens outside of the United States territory.” [Id.](#) at 266. The Court noted that “‘the people’ protected by the Fourth Amendment ... refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” [Id.](#) at 265. Accordingly, “aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with the country.” [Id.](#) at 271. So, for example, “once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders.” [Id.](#) Alternatively, where the alien was lawfully, albeit involuntarily, brought to this country, “this sort of presence ... is not of the sort to indicate any substantial connection with our country.” [Id.](#)

NOTE: “The Fourth Amendment was not ‘understood by contemporaries of the Framers to apply to activities of the United States directed against aliens in foreign territory or in international waters.’ The Fourth Amendment does not apply to a search of aliens conducted in foreign territory... The Fourth Amendment does not apply to the search of non-resident aliens on a ship in international waters.” [United States v. Aikins](#), 946 F.2d 608, 613 (9th Cir. 1990)(internal citations omitted).

- a) **Controls Over American Activities in Foreign Countries.** “Although the Fourth Amendment does not apply to foreign searches of the property of a non-resident alien, controls exist over the investigative activities of American agents operating in foreign countries.” *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1117. Specifically, “[b]esides the obligations imposed by the host countries themselves, Congress has restricted American agents’ foreign activities.” [Id.](#) For example, “[i]n the narcotics area, Congress has prohibited American agents from directly effecting ‘an arrest in any foreign country as part of any foreign police action with respect to narcotic control efforts’ and has prohibited American agents from interrogating or being present ‘during the interrogation of any United States person arrested in any foreign country with respect to narcotic control efforts.’” [Id.](#) (citing [Title 22 U.S.C. § 2291](#)).

- b) **Agreements and Treaties.** “The United States has entered into agreements and treaties with other countries which provide for mutual legal assistance and establish procedures for obtaining evidence in criminal investigations abroad.” *Id.* Further, “[t]he Office of International Affairs, (202) 514-0000, provides advice and assistance regarding the requirements for these agreements, and maintains a current list of mutual legal assistance agreements and treaties.” *Id.* This list can be viewed on the DOJNET, at: <http://10.173.2.12/criminal/oia/MLAT.html>.

NOTE: A question that may be asked during a discussion of foreign searches and seizures is this: If a defendant is brought to this country to stand trial through a “forcible abduction,” may he still be tried in Federal court? In ruling on this question, the Supreme Court has noted that “the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court’s jurisdiction by reason of a ‘forcible abduction.’” *Frisbie v. Collins*, 342 U.S. 519, 511 (1952)[citing *Ker v. Illinois*, 119 U.S. 436, 444 (1886)]. Most recently, this concept was reiterated in *United States v. Alvarez-Machain*, 504 U.S. 655, 657 (1992), where the Court held that “a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, [does not] thereby acquire a defense to the jurisdiction of this country’s courts.” Instead, courts are to refer to the terms of the extradition treaty to determine whether the abduction was a violation. Thus, “[u]nder *Alvarez-Machain*, to prevail on an extradition treaty claim, a defendant must demonstrate, by reference to the express language of a treaty and/or the established practice thereunder, that the United States affirmatively agreed not to seize foreign nationals from the territory of its treaty partner.” *United States v. Noriega*, 117 F.3d 1206, 1213 (11th Cir. 1997), cert. denied, 523 U.S. 1060 (1998). Finally, at least one court has created an exception to the “*Ker - Frisbie*” rule for situations in which a defendant is brought to this country for trial through “the use of torture, brutality and similar outrageous conduct.” *United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 65 (2d Cir.), cert. denied, 421 U.S. 1001 (1975). However, “[t]he Supreme Court has yet to rule on this exception, and ‘no court ... which remanded the case for factual findings, has ever found conduct that rises to the level necessary to require the United States to divest itself of jurisdiction.’” Robert Iraola, *A Primer on Legal Issues Surrounding the Extraterritorial Apprehension of Criminals*, 29 Am. J. Crim. L. 1, 8 (2001).

- 3) **Searches of United States Citizens and Resident Aliens in Foreign Countries.** “When conducted by, on behalf of, or jointly with the United States Government, the Fourth Amendment applies to searches and seizures against United States citizens and resident aliens while abroad.” *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1118.
- a) **When the Fourth Amendment Applies.** Generally speaking, the Fourth Amendment applies to overseas searches in three (3) related situations:
- (1) **Searches By American Law Enforcement Personnel Only.** See, e.g., *United States v. Conroy*, 589 F.2d 1258, 1264 (5th Cir.), cert. denied, 444 U.S. 831 (1979)(“The Fourth Amendment not only protects all within our bounds; it also shelters our citizens wherever they may be in the world from unreasonable searches by our own government”).

- (2) **Searches By Foreign Law Enforcement Agents Acting On Behalf of the United States Government.** See, e.g., [Rose](#), 570 F.2d at 1362 (Noting that, “if American law enforcement officials participated in the foreign search, or if the foreign authorities actually conducting the search were acting as agents for their American counterparts, the exclusionary rule can be invoked”).
- (3) **Where Search is a “Joint Venture.”** See, e.g., [Behety](#), 32 F.3d at 510-511 (Noting “the exclusionary rule may be invoked if American law enforcement officials substantially participated in the search or if the foreign officials conducting the search were actually acting as agents for their American counterparts. Some courts have described this exception as the joint venture doctrine, and explain that it requires that the participation of federal agents be so substantial so as to convert the search into a joint venture”).
- b) **Any Overseas Search Must Be Reasonable.** [Rule 41](#) of the Federal Rules of Criminal Procedure does not authorize a Federal judge to issue a search warrant for a location outside the United States. In fact, even if such a warrant were issued, it would be a “dead letter outside the United States.” [Verdugo-Urquidez](#), 494 U.S. at 274. And, “[e]ven if no warrant were required, American agents would have to articulate specific facts giving them probable cause to undertake a search or seizure if they wished to comply with the Fourth Amendment” [Id.](#) Instead, any search that is conducted must meet the reasonableness requirements of the Fourth Amendment. While American “law governs whether illegally obtained evidence should be excluded, and the essence of [that] inquiry is whether exclusion serves the rationale of deterring federal officers from unlawful conduct,” [United States v. Peterson](#), 812 F.2d 486, 491-92 (9th Cir. 1987), any analysis of the reasonableness of a foreign search will generally include a review of local foreign law on the subject. [Barona](#), 56 F.3d at 1092 (“If a joint venture is found to have existed, “the law of the foreign country must be consulted at the outset as part of the determination whether or not the search was reasonable”)(citation omitted).

- (1) **Compliance With Foreign Law Not Dispositive On Issue of Reasonableness.** At least two Federal courts have decided that compliance with the law of the foreign nation in which the search occurred is not dispositive on the issue of a search's reasonableness. See [Conroy](#), 589 F.2d at 1265 ("The mere consent of foreign authorities to a seizure that would be unconstitutional in the United States does not dissipate its illegality even though the search would be valid under local law"); [United States v. Andreas](#), 1998 U.S. Dist. LEXIS 1014, at *5 (N.D. Ill. 1998)(unpublished), aff'd, 216 F.3d 645 (7th Cir.), cert. denied, 531 U.S. 1014 (2000). (Noting "the Fourth Amendment reasonableness standard applies to any resulting searches and the law of the foreign country must be consulted to determine the reasonableness of such searches").
- (2) **Compliance With Foreign Law is Dispositive On Issue of Reasonableness.** The Ninth Circuit Court of Appeals has determined that "compliance with foreign law alone determines whether the search violated the Fourth Amendment." [Barona](#), 56 F.3d at 1092. See also [Peterson](#), 812 F.2d at 491 (Noting that "local law of the [foreign country] governs whether the search was reasonable"); [United States v. Juda](#), 46 F.3d 961, 968 (9th Cir.), cert. denied, 515 U.S. 1169 (1995).
- (Noting that the "Fourth Amendment's reasonableness standard applies to United States officials conducting a search affecting a United States citizen in a foreign country," and that "a foreign search is reasonable if it conforms to the requirements of foreign law")(internal citations omitted).

NOTE: "If foreign law was not complied with, a search may be upheld under the good faith exception to the exclusionary rule when United States officials reasonably rely on foreign officials' representations of foreign law." *Federal Narcotics Prosecutions*, 2d Ed., Office of Legal Education, Department of Justice, at 1119. See, e.g., [Juda](#), 46 F.3d at 968; [Peterson](#), 812 F.2d at 492 ("The good faith exception is grounded in the realization that the exclusionary rule does not function as a deterrent in cases in which the law enforcement officers acted on a reasonable belief that their conduct was legal. ... We conclude that the reasoning applies as well to reliance on foreign law enforcement officers' representations that there has been compliance with their own law").

- f. **The Exclusionary Rule Does Not Apply to Evidence That Would Have Been “Inevitably” Discovered.** “If the prosecution can establish by a preponderance of the evidence that ... information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received.” [Nix v. Williams](#), 467 U.S. 431, 444 (1984). This has become known as the “inevitable discovery” exception to the exclusionary rule. See, e.g., [United States v. Scott](#), 270 F.3d 30, 42 (1st Cir. 2001), cert. denied, 535 U.S. 1007 (2002)(Noting one exception to the exclusionary rule is “the inevitable discovery exception,” which “applies to any case in which the prosecution can show by a preponderance of the evidence that the government would have discovered the challenged evidence even had the constitutional violation to which the defendant objects never occurred”).
- 1) **Rationale for the Rule.** “The inevitable discovery doctrine is based on the same rationale as the independent source doctrine - that ‘the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been if no police error or misconduct had occurred.’” [United States v. Larsen](#), 127 F.3d 984, 986 (10th Cir. 1997), cert. denied, 522 U.S. 1140 (1998)(citation omitted).
 - 2) **Courts Are Split on Whether an Investigation was Ongoing at the Time of the Constitutional Violation.** The circuit courts of appeal are split on whether the “inevitable discovery” exception requires that law enforcement officers were actively pursuing an alternative investigation at the time the constitutional violation occurred. To state the issue differently, courts are split on the following: “At the time one officer is engaged in a search violative of the Fourth Amendment, must another officer have already set in motion an independent and lawful inquiry that would have led to the discovery of the same evidence?” Stephen E. Hessler, Note, [Establishing Inevitability Without Active Pursuit: Defining the Inevitable Discovery Exception to the Fourth Amendment Exclusionary Rule](#), 99 Mich. L. Rev. 238, 243 (2000).

- a) **Some Courts Require That Law Enforcement Be Actively Engaged in an Alternative Investigation for the Exception to Apply.** Some federal courts require the government to be actively involved in an independent investigation that would have “inevitably” resulted in the discovery of the evidence. See e.g., [United States v. Villalba-Alvarado](#), 345 F.3d 1007, 1019 (8th Cir. 2003) (Noting first element of “inevitable discovery” is that “there must be an ongoing line of investigation that is distinct from the impermissible or unlawful technique”); [United States v. Lamas](#), 930 F.2d 1099, 1102 (5th Cir. 1991) (Noting that, for exception to apply, the government must show, *inter alia*, that they were “actively pursuing a ‘substantial alternate line of investigation at the time of the constitutional violation’”)(citation omitted); [United States v. Wilson](#), 36 F.3d 1298, 1304 (5th Cir. 1994)(same); [United States v. Eng](#), 971 F.2d 854, 681 (2d Cir. 1992) (Agreeing with Fifth Circuit’s holding that “the alternate means of obtaining the evidence must at least be in existence and, at least to some degree, imminent, if yet unrealized”); . In so holding, these courts seem to seize upon language in Justice Brennan’s dissent in [Nix](#). See [Nix](#), 467 U.S. at 459 (Brennan, J., dissenting) (Noting the majority concluded “that unconstitutionally obtained evidence may be admitted at trial if it inevitably would have been discovered in the same condition by an independent line of investigation that was already being pursued when the constitutional violation occurred”).
- b) **Alternatively, Some Courts Do Not Require That an Active Investigation Be Underway for the Exception to Apply.** On the other hand, some federal courts have found that the “inevitable discovery exception applies whenever an independent investigation inevitably would have led to discovery of the evidence, whether or not the investigation was ongoing at the time of the illegal police conduct.” [United States v. Souza](#), 223 F.3d 1197, 1203 (10th Cir. 2000). See also [United States v. Ford](#), 22 F.3d 374, 377 (1st Cir.), cert. denied, 513 U.S. 900 (1994) (noting court had previously declined an “ongoing investigation” requirement)[citing [United States v. Silvestri](#), 787 F.2d 736, 746 (1st Cir. 1986), cert. denied, 487 U.S. 1233 (1988)]; [United States v. Thomas](#), 955 F.2d 207, 210 (4th Cir. 1992); [United States v. Kennedy](#), 61 F.3d 494, 499-500 (6th Cir. 1995), cert. denied, 517 U.S. 1119 (1996) (“Therefore, we hold that an alternate, independent line of investigation is not required for the inevitable discovery exception to apply”); [United States v. Boatwright](#), 822 F.2d 862, 864 (9th Cir. 1987) (“The existence of two independent investigations at the time of discovery is not, therefore, a necessary predicate to the inevitable discovery exception”).

In two more recent decisions, the Sixth Circuit Court of Appeals has ignored the reasoning of [Kennedy](#), *supra*, and required “the government to proffer clear evidence ‘of an independent, untainted investigation that inevitably would have uncovered the same evidence’ as that discovered through the illegal search.” [United States v. Dice](#), 200 F.3d 978, 986 (6th Cir. 2000). See also [United States v. Haddix](#), 239 F.3d 766, 679 (6th Cir. 2001). This is contrary to Sixth Circuit rules, however, which require an “en banc” decision to overrule a published opinion. Accordingly, [Kennedy](#) is still considered to be the law of the Sixth Circuit on this issue.

- g. **The Exclusionary Rule Does Not Apply to Deportation Proceedings.** The exclusionary rule does not apply to deportation proceedings. [INS v. Lopez-Mendoza](#), 468 U.S. 1032, 1050 (1984).
- h. **The Exclusionary Rule Does Not Apply to Grand Jury Proceedings.** The exclusionary rule does not apply to grand jury proceedings. [United States v. Calandra](#), 414 U.S. 338, 354 (1974).
- i. **The Exclusionary Rule Does Not Apply to Sentencing Proceedings.** The exclusionary rule does not apply during sentencing proceedings. See, e.g., [United States v. Torres](#), 926 F.2d 321, 325 (3d Cir. 1991) (“We hold, therefore, that evidence suppressed as in violation of the Fourth Amendment may be considered in determining appropriate guideline ranges”); [United States v. Brimah](#), 214 F.3d 854, 859 (7th Cir. 2000) (“We join the other circuits who have considered this issue and hold that the exclusionary rule does not bar the consideration at sentencing of evidence seized in violation of the Fourth Amendment”).
- j. **The Exclusionary Rule Does Not Apply to Civil Tax Proceedings.** The exclusionary rule does not apply to civil tax proceedings. [United States v. Janis](#), 428 U.S. 433, 454 (1976) (“We conclude that exclusion from federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs imposed by the exclusion”).

INSTRUCTOR NOTE – EXCEPTIONS TO THE EXCLUSIONARY RULE

UPTP receives little or no training on obtaining and executing search warrants. In addition to not being tested on those EPOs specific to obtaining and executing search warrants, a separate set of test questions is used for UPTP in this EPO to avoid asking good-faith exception questions. If time permits, the good-faith exception can be covered in class, but UPTP testing emphasis is on the other exceptions to the exclusionary rule.

H. EPO #8: IDENTIFY THE LIMITATIONS OF AN ARREST WARRANT

- 1. **General Rule – There Are a Variety of Ways in Which Federal Arrest Warrants May Be Obtained.** Within the federal system, arrest warrants may be obtained through a variety of different mediums, including:
 - a. **Criminal Complaints;**
 - b. **Grand Jury Indictments; and**
 - c. **Informations.**

2. **The Rules Regarding the Form and Issuance of Arrest Warrants are Contained in the Federal Rules of Criminal Procedure.** The rules regarding the form and issuance of federal arrest warrants are contained in two [Rules 4](#) and [9](#) of the Federal Rules of Criminal Procedure.
 - a. **Arrest Warrant Upon Complaint.** [Rule 4](#) of the Federal Rules of Criminal Procedure addresses the issuance of federal arrest warrants based upon a complaint. Subsection (a) of the rule provides, in pertinent part, that “if the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it.” As used in this rule, a “complaint” is defined by [Rule 3](#) as “a written statement of the essential facts constituting the offense charged. It must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.”
 - b. **Arrest Warrant Upon Indictment or Information.** [Rule 9](#) of the Federal Rules of Criminal Procedure addresses the issuance of federal arrest warrants based upon an indictment or information. Subsection (a) of the rule provides, in pertinent part, that “the court must issue a warrant - or at the government’s request, a summons - for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it.” Further, “the court may issue more than one warrant or summons for the same defendant.”
3. **The Form of the Warrant.** [Rule 4\(b\)\(1\)](#) describes the form that a federal arrest warrant based upon a complaint must take. When the warrant is based upon an indictment or information, it “must conform to [Rule 4\(b\)\(1\)](#),” [Rule 9\(b\)\(1\)](#), with certain exceptions, noted below. Specifically, a federal arrest warrant must contain the following:
 - a. **Signature of Magistrate Judge.** First, the warrant must be “signed by the magistrate judge.” For arrest warrants based upon an indictment or information, the warrant “must be signed by the clerk.” [Rule 9\(b\)\(1\)](#).
 - b. **Name of the Defendant.** Second, the warrant must “contain the defendant’s name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty.”
 - c. **Offense Charged.** Third, the warrant must “describe the offense charged in the complaint.” For arrest warrants based upon an indictment or information, the warrant “must describe the offense charged in the indictment or information.” [Rule 9\(b\)\(1\)](#).
 - d. **Command to Arrest.** Finally, the warrant must “command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.”
4. **The Execution of the Warrant.** [Rule 4\(c\)](#) describes the manner in which arrest warrants based upon a complaint must be executed. When the warrant is based upon an indictment or information, “the warrant must be executed ... as provided in [Rule 4\(c\)\(1\), \(2\), and \(3\)](#).” [Rule 9\(c\)\(1\)\(A\)](#).
 - a. **Who Can Execute?** [Rule 4\(c\)\(1\)](#) provides that “only a marshal or other authorized officer may execute a warrant.”

- b. **Territorial Limits.** [Rule 4\(c\)\(2\)](#) provides, that an arrest warrant “may be executed ... within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest.”
- c. **Time Limits.** “Unlike a search warrant, an arrest warrant typically does not require execution within a specified time period or ‘forthwith.’” [United States v. Watson](#), 423 U.S. 411, 452 n.16 (1976)(Marshall, J., dissenting). See also [United States v. Jones](#), 377 F.3d 1313, 1314 (11th Cir. 2004)(“Although the officer did not serve the warrant immediately upon his discovery of it, delay in executing [an arrest] warrant is not itself unlawful”); [United States v. Cravero](#), 545 F.2d 406, 413 (5th Cir. 1976)(“[A] suspect has no constitutional right to be arrested earlier than the police choose”).
- d. **Manner of Execution.** [Rule 4\(c\)\(3\)\(A\)](#) provides, in pertinent part, that “a warrant is executed by arresting the defendant.”
 - 1) **Upon Arrest, Officer Must Show the Warrant to the Defendant.** “Upon arrest, an officer possessing the warrant must show it to the defendant.” [Rule 4\(c\)\(3\)\(A\)](#).
 - 2) **However, the Arresting Officer Need Not Have a Copy of the Warrant at the Time of Arrest.** There is no requirement, however, that an officer have the warrant present at the time of the arrest. Specifically, [Rule 4\(c\)\(3\)\(A\)](#) provides that, “If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the warrant to the defendant as soon as possible.” See [United States v. \\$ 64,000.00 in United States Currency](#), 722 F.2d 239, 244 (5th Cir. 1984)(“The officer need not have the warrant in his possession, though ‘upon request’ he shall show it to the defendant ‘as soon as possible’”); [United States v. Buckner](#), 717 F.2d 297, 301 (6th Cir. 1983)(“ The fact that the officers did not have the arrest warrant in hand is of no consequence”); [United States v. George](#), 625 F.2d 1081, 1086 (3rd Cir. 1980)(“Even in cases where an arrest warrant has actually been issued, the arresting officer is not required to have it in his possession”).
 - 3) **Some Courts Hold That An Arrest Warrant Compels Arresting the Defendant.** Some courts have held that, “once an arrest warrant has been issued, the warrant “compels arrest and, unless it is retracted by the court, the arresting officer who chooses to ignore its command operates at some personal risk.” [Benjamin v. United States](#), 554 F. Supp. 82, 86 (E.D.N.Y. 1982)(citing [Title 18 U.S.C. § 755](#), “Officer Permitting Escape”). See also [Rodriguez v. United States](#), 847 F. Supp. 231, 235 (D.P.R. 1993), *aff'd*, 54 F.3d 41 (1st Cir. 1995)[“Had the officers not arrested Rodriguez, who they reasonably believed was the subject on the arrest warrant, and had she fled the jurisdiction, criminal charges could have been brought against the Deputy Marshals, pursuant to [18 U.S.C. § 755](#), for failure to comply with their duty under [[Rule 4\(c\)\(3\)\(A\)](#)]”] (internal footnote and citation omitted). Alternatively, some courts have noted that “law enforcement officials are under no constitutional duty to terminate a criminal investigation the moment they have an arrest warrant in their hands.” [United States v. Toro](#), 840 F.2d 1221, 1233 (5th Cir. 1988).

5. **Return of the Warrant.** Both [Rule 4](#) and [Rule 9](#) provide for a return of the arrest warrant.
 - a. **Rule 4(c)(4)(A).** When an individual is arrested based upon a warrant issued upon a complaint, [Rule 4\(c\)\(4\)\(A\)](#) provides for a return of that warrant. Specifically, the rule states: "After executing a warrant, the officer must return it to the judge before whom the defendant is brought in accordance with [Rule 5](#). At the request of an attorney for the government, an unexecuted warrant must be brought back to and canceled by a magistrate judge or, if none is reasonably available, by a state or local judicial officer."
 - b. **Rule 9(c)(2).** When an individual is arrested based upon a warrant issued upon an indictment or information, [Rule 9\(c\)\(2\)](#) provides the warrant "must be returned in accordance with [Rule 4\(c\)\(4\).](#)"

I. EPO #9: IDENTIFY WHEN AN ARREST INVOLVING A FELONY REQUIRES THE USE OF A WARRANT

1. **General Rule – A Law Enforcement Officer May Make A Warrantless Arrest For a Felony Offense Upon Probable Cause.** "The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony...." [Carroll v. United States](#), 267 U.S. 132, 156 (1925). However, this rule is not without limitations, as discussed below.
2. **An Officer With Probable Cause May Make a Warrantless Arrest for Felony Offenses in a Public Place.** Where a law enforcement officer has probable cause to believe that a suspect located in a public place has committed a felony offense, the officer may make a warrantless arrest of the individual. See [Carroll v. United States](#), 267 U.S. 132, 156 (1925) ("The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony...."); [United States v. Dickey-Bey](#), 393 F.3d 449, 453 (4th Cir. 2004) ("It is well-settled under Fourth Amendment jurisprudence that a police officer may lawfully arrest an individual in a public place without a warrant if the officer has probable cause to believe that the individual has committed, is committing, or is about to commit a crime"); [Sparing v. Village of Olympia Fields](#), 266 F.3d 684, 688 (7th Cir. 2001) ("Police officers may constitutionally arrest an individual in a public place (e.g., outside) without a warrant, if they have probable cause" (citation omitted)); [United States v. Goddard](#), 312 F.3d 1360, 1362 (11th Cir. 2002), *cert. denied*, 538 U.S. 969 (2003) ("The Fourth Amendment permits warrantless arrests in public places where an officer has probable cause to believe that a felony has occurred"). In [United States v. Watson](#), 423 U.S. 411, 418 (1976), the Supreme Court emphasized that the Fourth Amendment incorporated "the ancient common law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in this presence if there was reasonable grounds for making the arrest."
3. **Entering an Arrestee's Home to Make an Arrest.** "It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" [Welsh v. Wisconsin](#), 466 U.S. 740, 748 (1984). See also [Payton v. New York](#), 445 U.S. 573, 590 (1980) ("The common law maxim 'every man's house is his castle' is part of our Fourth Amendment jurisprudence prohibiting unreasonable searches and seizures"). For that reason, arresting a person in his home without a warrant is "normally a violation of the Fourth Amendment, even if there is probable cause to arrest" the person. [Hadley v. Williams](#), 368 F.3d 747, 749 (7th Cir. 2004).

- a. **Warrantless Entries Into a Home Are Presumptively Unreasonable.** Accordingly, "a search of the home without a warrant is a well-settled violation of the Fourth Amendment, and the Supreme Court in Payton simply made clear that it is no less so when the search is conducted in order to seize (i.e., by an arrest) a person, rather than property." Sparing, 266 F.3d at 689 (citation omitted). See also Payton, 445 U.S. at 586 ("It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable"); United States v. Leverington, 397 F. 3d 1112, 1114 (8th Cir. 2005) ("The Fourth Amendment generally prohibits entry to a home without a warrant, unless the circumstances meet an established exception to the warrant requirement ...").
- b. **Forcing a Subject Outside is the Same as an Entry by LEOs.** The location of the arrested person, and not the arresting agents, determines whether an arrest occurs in-house or in a public place. If the police force a person out of his house to arrest him, the arrest has taken place inside the home. Fisher v. City of San Jose, 475 F.3d 1049 (9th Cir. 2007).
- c. **Entries Into a Home to Make an Arrest Require a Warrant, Consent, or Exigent Circumstances.** In order to enter a person's home to make an arrest, a law enforcement officer must have
- 1) **A Warrant;**
 - 2) **Consent;** or
 - 3) **Exigent Circumstances.**
- Payton, 445 U.S. at 588, 589 ("To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is clearly established under statutory authority and when probable cause is clearly present")(citation omitted).

NOTE: Recall that, for Fourth Amendment purposes, a hotel room is treated essentially the same, if not exactly the same, as a home. For that reason, "police officers may only gain visual access to a hotel room if (1) the room's occupant voluntarily opens the hotel room door in response to a request (but not a threat or a command), (2) the officers have a warrant, or (3) the officers have probable cause and one of the exceptions to the warrant requirement exists." United States v. Washington, 387 F.3d 1060, 1070 (9th Cir. 2004).

- d. **Arrest Warrants Allow Officers to Enter the Arrestee's Home to Make an Arrest When There is Reason to Believe the Suspect is Inside.** "For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives *when there is reason to believe the suspect is within.*" Payton, 445 U.S. at 603 (emphasis added). See also United States v. Powell, 379 F.3d 520, 523 (8th Cir. 2004)(Noting "that police do not need a search warrant to enter the home of the subject of an arrest warrant in order to effectuate the arrest")(citation omitted). "Because an arrest warrant authorizes the police to deprive a person of his liberty, it necessarily also authorizes a limited invasion of that person's privacy interest when it is necessary to arrest him in his home." Steagald v. United States, 451 U.S. 204, 214 n.7 (1981).

- 1) **An Officer Must Have “Reason to Believe” That (a) the Suspect Lives at the Residence and (b) is in the Residence at the Time of Entry.** To enter a residence with an arrest warrant, an officer must meet two basic requirements. “A valid arrest warrant carries with it the authority to enter the residence of the person named in the warrant in order to execute the warrant” so long as the police have:
- a) A reasonable belief that the suspect resides at the place to be entered, and
 - b) **A reasonable belief that he is currently present in the dwelling.** See United States v. Clayton, 210 F.3d 841, 843 (8th Cir. 2000)(citation omitted)(emphasis added); United States v. Magluta, 44 F.3d 1530, 1535 (11th Cir.), cert. denied, 516 U.S. 869 (1995)(Officers must have “a reasonable belief that the location to be searched is the suspect’s dwelling, and that the suspect is within the residence at the time of entry”); Valdez v. McPheters, 172 F.3d 1220, 1224 (10th Cir. 1999)(“[P]olice officers entering a residence pursuant to an arrest warrant must demonstrate (1) a reasonable belief that the arrestee lived in the residence, and (2) a reasonable belief that the arrestee could be found within the residence at the time of the entry”); United States v. Barrera, 464 F.3d 496 (5th Cir. 2006) (reviewing factors officers may use to develop a reasonable belief that a suspect resides in a particular location, including an address provided to a bail bondsman or creditors, customer lists for utility services, vehicle registration records, reports of neighbors or commercial delivery employees, surveillance, and information from parole officers).

NOTE: Of course, “[t]he officers’ assessment need not in fact be correct; rather, they need only reasonably believe that the suspect resides at the dwelling to be searched and is currently present at the dwelling.” Powell, 379 F.3d at 523 (citation omitted).

- 2) **Courts are Split on Whether “Reason to Believe” Means the Same or Something Less Than “Probable Cause.”** In order to enter a residence with an arrest warrant to effect an arrest, a law enforcement officer must have “reason to believe the suspect is within.” What exactly is meant by the phrase “reason to believe” is an open question, and has resulted in a split among the federal circuits.
- a) **The Majority View.** A majority of the circuits hold that “reason to believe” is a lesser standard than probable cause. See, e.g., United States v. Route, 104 F.3d 59, 62 (5th Cir.), cert. denied, 521 U.S. 1109 (1997)(“To the extent that this court has not already done so ... we adopt today the ‘reasonable belief’ standard of the Second, Third, Eighth, and Eleventh Circuits”)(footnotes omitted); Valdez, 172 F.3d at 1227 n.5 (“While probable cause itself is a relatively low threshold of proof, it is a higher standard than ‘reasonable belief,’ which is, as everyone agrees, the appropriate standard”)(citation omitted).

- b) **The Minority View.** However, the Ninth Circuit Court of Appeals has held that the “reason to believe” standard “should be read to entail the same protection and reasonableness inherent in probable cause.” See, e.g., United States v. Diaz, 491 F.3d 1074 (9th Cir. 2007); United States v. Gorman, 314 F.3d 1105, 1110 (9th Cir. 2002). The Third Circuit Court of Appeals has also suggested that “reason to believe” is synonymous with probable cause. See United States v. Agnew, 385 F.3d 388 (3rd Cir. 2004), *vacated on other grounds and remanded for resentencing by Agnew v. United States*, 543 U.S. 1136 (U.S. 2005) (Noting that, pursuant to Payton, “police may enter a suspect’s residence to make an arrest armed only with an arrest warrant if they have **probable cause** to believe that the suspect is in the home”)(emphasis added). The Sixth Circuit has expressly avoided deciding the issue. United States v. Hardin, 2008 U.S. App. LEXIS 18135 (6th Cir. 2008) (holding that the language addressing this question in its two prior cases, United States v. Jones, 641 F.2d 425 (6th Cir. 1981), and United States v. Pruitt, 458 F.3d 477 (6th Cir. 2006), was dicta and not controlling, and refusing to set a standard).
- 3) **Courts Rely Upon Various Factors to Indicate Presence Inside the Home.** “Courts ‘must be sensitive to common sense factors indicating a resident’s presence.’” Valdez, 172 F.3d at 1226. “Indeed, the officers may take into account the fact that a person involved in criminal activity may be attempting to conceal his whereabouts.” Id. (citation omitted). In determining a suspect’s presence in the home, a law enforcement officer may consider the following factors:
- a) **Surveillance Indicating the Suspect is in the Residence.** However, “direct surveillance or the actual viewing of the suspect on the premises is not required.” Id. (citing Magluta, 44 F.3d at 1535, 1538);
- b) **The Presence of the Suspect’s Automobile**, which may indicate his presence, Valdez, 172 F.3d at 1226 (citation omitted); United States v. Bervaldi, 226 F.3d 1256, 1264 (11th Cir. 2000) (Presence of suspect’s automobile was an important fact in establishing his presence in home);
- c) **The Time of Day**, United States v. Terry, 702 F.2d 299, 319 (2d Cir.), cert. denied, 461 U.S. 931 (1983) (reasonable to believe suspect would be at home at 8:45 a.m. on Sunday morning);
- d) **Observing the Operation of Lights or Other Electrical Devices**, Route, 104 F.3d at 63 (officers heard television set left on inside residence after third person left residence); Magluta, 44 F.3d at 1538 (observations that “the lawn was manicured and a porch light was on” gave “no indication that Magluta departed, such as for work or the like”);
- e) **The Circumstances of a Suspect’s Employment**, United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995)(officer’s conduct reasonable since they knew the suspect “was unemployed and typically slept late”);

- f) **Tips From Citizens**, United States v. Boyd, 180 F.3d 967, 978 (8th Cir. 1999)(Officer reasonably believed that suspect was home based on confidential informant's assertion, corroborated by police observation of a car appearing to be the defendant's and observing that the hood of defendant's girlfriend's car was warm, that defendant had arrived there);
 - g) **A Lack of Evidence That the Suspect is Elsewhere**, see Terry, 702 F.2d at 319 (one factor in supporting reasonableness was twelve-year-old son's failure to indicate father was not inside).
- 4) "No single factor is, of course, dispositive. Rather, the court must look at all of the circumstances present in the case to determine whether the officers entering the residence had a reasonable belief that the suspect resided there and would be found within." Valdez, 172 F.3d at 1226. See, e.g., United States v. Smith, 363 F.3d 811, 814-15 (8th Cir. 2004), *vacated on other grounds and remanded for resentencing by Smith v. United States*, 543 U.S. 1103 (2005), (Totality of the circumstances supported reasonable belief suspect was in home where (a) towel covering window moved; (b) baby was crying inside the apartment; (c) suspect was known to have been in the apartment during the morning hours on two earlier occasions; and (d) officers knew suspect usually did not answer the door after repeated knocking).
4. **To Arrest a Suspect in a Third Party's Residence, a Warrant, Consent, or Exigent Circumstances Must Exist.** In Steagald v. United States, 451 U.S. 204 (1981), the Supreme Court addressed "whether, under the Fourth Amendment, a law enforcement officer may legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant." Id. at 205. In sum, the Court held that a law enforcement officer could not enter the home of a third party to affect an arrest unless he has:
- a. **A Search Warrant;**
 - b. **Exigent Circumstances; or**
 - c. **Consent of the Third Party Homeowner.**
- Id. While the arrest warrant may protect the arrestee from an unreasonable seizure, "it [does] absolutely nothing to protect [the homeowner's] privacy interest in being free from an unreasonable invasion and search of his home." Id. at 213. Similarly, though an arrest warrant necessarily allows for entry into the home of the person named in the warrant to affect an arrest, "this analysis ... is plainly inapplicable when the police seek to use an arrest warrant as legal authority to enter the home of a third party to conduct a search. Such a warrant embodies no judicial determination whatsoever regarding the person whose home is to be searched." Id. at 214. See also Minnesota v. Carter, 525 U.S. 83, 100 (1998) (Kennedy, J., concurring)("Absent exigent circumstances or consent, the police cannot search for the subject of an arrest warrant in the home of a third party, without first obtaining a search warrant directing entry"); United States v. Lovelock, 170 F.3d 339, 344 (2d Cir.), *cert. denied*, 528 U.S. 853 (1999)("The principle discussed in Payton, allowing officers to enter the residence of the suspect named in the arrest warrant, does not authorize entry into a residence in which the officers do not believe the suspect is residing but believe he is merely visiting").

NOTE: Of course, “[i]f the suspect is a co-resident of the third-party, then [Steagald](#) does not apply, and [Payton](#) allows both arrest of the subject of the arrest warrant and use of evidence found against the third party.” [United States v. Risse](#), 83 F.3d 212, 216 (8th Cir. 1996)(citations and internal quotation marks omitted).

J. EPO #10: IDENTIFY WHEN AN ARREST INVOLVING A MISDEMEANOR REQUIRES THE USE OF A WARRANT

1. **General Rule – A Law Enforcement Officer May Make A Warrantless Arrest in Public For a Misdemeanor Offense if the Crime was Committed “In the Officer’s Presence.”** “If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.” [Atwater v. City of Lago Vista](#), 532 U.S. 318, 354 (2001). This is consistent with the ancient common law rule that “a peace officer was permitted to arrest without a warrant for a misdemeanor ... committed in his presence....” [United States v. Watson](#), 423 U.S. 411, 418 (1976). See also [Carroll](#), 267 U.S. at 156-157 (“The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony, and that he may only arrest without a warrant one guilty of a misdemeanor if committed in his presence”).
2. **The Requirement the Offense Occur “In the Officer’s Presence.”** “The United States Constitution does not require a warrant for misdemeanors not occurring in the presence of the arresting officer.” [Fields v. South Houston](#), 922 F.2d 1183, 1189 (5th Cir. 1991). See also [Barry v. Fowler](#), 902 F.2d 770, 772 (9th Cir. 1990)(“The requirement that a misdemeanor must have occurred in the officer’s presence to justify a warrantless arrest is not grounded in the Fourth Amendment”). Further, “the Supreme Court has never held that a police officer violates the Fourth Amendment merely by arresting someone without a warrant for a misdemeanor offense which did not occur in the officer’s presence and/or did not involve a breach of the peace. Rather, when determining the constitutionality of a warrantless arrest for a criminal offense, the Court has repeatedly focused its inquiry on the existence of probable cause for the arrest.” [Woods v. City of Chicago](#), 234 F.3d 979, 992 (7th Cir. 2000), cert. denied, 534 U.S. 955 (2001). Thus, even when a statutory violation has occurred (e.g., a violation of a state statute requiring “in the presence”), no Fourth Amendment violation will be found unless probable cause for the arrest did not exist. See, e.g., [Vargas-Badillo v. Diaz-Torres](#), 114 F.3d 3, 6 (1st Cir. 1997); [Pyles v. Raisor](#), 60 F.3d 1211, 1215 (6th Cir. 1995); [Scott v. District of Columbia](#), 101 F.3d 748, 754 (D.C. Cir. 1996), cert. denied, 520 U.S. 1231 (1997); [Fields](#), *supra*; [Barry](#), *supra*.
3. **Most Federal Statutory Arrest Authority Incorporates the “In the Presence” Requirement.** Nonetheless, the “in the presence” requirement has been incorporated into the vast majority of statutes providing federal law enforcement officers with arrest authority. See, e.g., [Title 18 U.S.C. § 3053](#) (U.S. Marshals Service); [Title 18 U.S.C. § 3056](#) (U.S. Secret Service); [Title 19 U.S.C. § 1589a](#) (U.S. Customs Service); [Title 26 U.S.C. § 7608](#) (Internal Revenue Service).
4. **What Does “In the Presence” Mean?** Generally speaking, an “officer has probable cause to believe a misdemeanor is taking place in his presence ‘when the facts and circumstances as observed by the officer through the officer’s senses are sufficient to warrant an officer of reasonable caution to believe that an offense is occurring.’” [Tanberg v. Sholtis](#), 401 F.3d 1151, 1157 (10th Cir. 2005)(citation omitted).

5. **Examples of “In the Presence.”** Because the “in the presence” limitation for misdemeanor offenses appears with some frequency, examples of what that phrase means are helpful.
- a. **Officer is the Victim.** So, for example, where the officer making the arrest was the actual victim of the crime, such as an assault, the “in the presence” requirement is met. See, e.g., [Hoover v. Garfield Heights Municipal Court](#), 802 F.2d 168, 172 (6th Cir. 1986), cert. denied, 480 U.S. 949 (1987) (Where officer was assaulted, “the offense obviously was committed in the presence of a police officer and there was a reasonable ground for [the suspect’s] arrest”).
 - b. **Officer Establishes Probable Crime Offense Being Committed.** “The presence requirement ... allow[s] arrest where the facts confronting an officer give him probable cause to believe that the offense is being committed. An officer may draw reasonable inferences from the immediate observations of his senses.” [United States v. Miller](#), 589 F.2d 1117, 1128 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979).
6. **To Enter an Arrestee’s Home to Make an Arrest, an Officer Must Have a Warrant, Consent, or Exigent Circumstances.** As with a felony offense, in order to enter a person’s home to make an arrest, a law enforcement officer must have (1) a warrant; (2) consent; or (3) exigent circumstances. [Payton](#), 445 U.S. at 588, 589.

K. **EPO #11: IDENTIFY THE CONDITIONS UNDER WHICH AN OFFICER MAY USE FORCE TO EXECUTE A WARRANT (SEARCH OR ARREST) ACCORDING TO THE PROVISIONS OF [TITLE 18 U.S.C. § 3109](#)**

1. **General Rule - Before Entering a Dwelling to Serve Warrants, Officers Must Comply with [Title 18 U.S.C. § 3109](#).** “The Fourth Amendment says nothing specific about formalities in exercising a warrant’s authorization, speaking to the manner of searching as well as to the legitimacy of searching at all simply in terms of the right to be ‘secure ... against unreasonable searches and seizures.’” [United States v. Banks](#), 540 U.S. 31, 35 (2003). In terms of executing warrants in dwellings, [Title 18 U.S.C. § 3109](#) announces the Federal “knock and announce” rule. In sum, the statute provides that, “[p]olice acting under a warrant usually are required to announce their presence and purpose, including by knocking, before attempting forcible entry, unless circumstances exist which render such an announcement unreasonable.” [United States v. Sargent](#), 319 F.3d 4, 8 (1st Cir. 2003). “Failure to knock and announce prior to forcibly entering a location to execute a search warrant, absent exigent circumstances, is unreasonable under the Fourth Amendment.” [United States v. Smith](#), 386 F.3d 753, 758 (6th Cir. 2004). See also [Wilson v. Arkansas](#), 514 U.S. 927, 934 (1995). Of course, during the execution of search or arrest warrants, a law enforcement officer may obtain consent to gain entry into particular premises. However, where consent is not a viable option for law enforcement officers, forced entry may be required. In sum, there are two (2) situations in which a law enforcement officer may use force to gain entry to execute a search or arrest warrant:
- a. **[Title 18 U.S.C. § 3109](#) is the Federal “Knock and Announce” Statute.** [Title 18 U.S.C. § 3109](#) codified the common law “knock and announce” requirements, and requires that officers executing search or arrest warrants must, unless their entry is consented to, give notice of their authority and purpose and be refused entry before they can break into the premises to be searched.

- b. **Compliance with § 3109 May Be Excused When Exigent Circumstances Exist.** When exigent circumstances exist, compliance with the notice requirements of [§ 3109](#) may be excused, and force may be used to enter a home. These exigent circumstances are "exceptions" to the [§ 3109](#).
2. **The Statute.** [Title 18 U.S.C. § 3109](#) is the Federal "knock and announce" statute. Titled "Breaking Doors or Windows for Entry or Exit," the statute provides as follows:

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.
3. **Section 3109 Applies to Both Search and Arrest Warrants.** While the plain language of the statute appears to limit its application to the execution of search warrants, [§ 3109](#) has been made applicable to the execution of arrest warrants by case law. See [Miller v. United States](#), 357 U.S. 301 (1958)("The requirement stated in [Semayne's Case](#) still obtains. It is reflected in [Title 18 U. S. C. § 3109](#), in the statutes of a large number of States, and in the American Law Institute's proposed Code of Criminal Procedure, § 28. It applies, as the Government here concedes, whether the arrest is to be made by virtue of a warrant, or when officers are authorized to make an arrest for a felony without a warrant"); [United States v. Rivers](#), 1996 U.S. App. LEXIS 33678 (9th Cir. 1996)(In case involving arrest of defendant in his own home with an arrest warrant, court noted that "[section 3109](#) applies to the execution of arrest warrants as well as search warrants"); [United States v. Maden](#), 64 F.3d 1505 (10th Cir. 1995)(In case involving arrest of defendant in his apartment with an arrest warrant, court noted that "[section 3109](#) applies when officials attempt to enter a house to execute an arrest warrant"); [United States v. Nolan](#), 718 F.2d 589 (3rd Cir. 1983)(Holding that "[section 3109](#) has been interpreted to apply to breakings pursuant to arrest warrants as well as search warrants"); [United States v. Reyes](#), 922 F. Supp. 818 (S.D.N.Y. 1996)(Holding that "[section 3109](#) has been held to apply to arrest warrants," citing [Sabbath v. United States](#), 391 U.S. 585 (1968)]; [United States v. Gilbert](#), 829 F. Supp. 900 (E.D. Mich. 1993) (Holding that, "while [§ 3109](#) reads as if it only applies to search warrants, 'there is no doubt that this statute's requirements (although applicable in terms only to search warrants) apply to forcible entry to a home when officers seek to make an arrest of a person either on arrest warrant or on probable cause'"); [United States v. Reed](#), 810 F. Supp. 1078 (D. Alaska 1992)(Noting that "[18 U.S.C. § 3109](#) governs the service of search and, by extension, arrest warrants by federal agents"); and [United States v. Ross](#), 1995 U.S. App. LEXIS 9955 (6th Cir. 1995)(Holding that "the 'knock and announce' statute requires officers to announce their authority and purpose and be refused admittance before breaking into a house to execute a search or arrest warrant").
4. **Section 3109 has Three Primary Purposes.** The requirement to "knock and announce" under [§ 3109](#) has three primary purposes:
 - a. The reduction of the potential for violence to both the police officer and the occupants of the house into which entry is sought;
 - b. The needless destruction of private property; and
 - c. A recognition of the individual's right of privacy in his house.

See [Smith](#), 386 F.3d at 758 (“The knock-and-announce rule: 1) reduces the potential for violence to both the police officers and the occupants of the house into which entry is sought; 2) curbs the needless destruction of private property; and 3) protects the individual's right to privacy in his or her house”)(internal quotation marks and citation omitted); [United States v. Dunnock](#), 295 F.3d 431, 434 (4th Cir.), cert. denied, 537 U.S. 1037 (2002)(Noting “knock and announce” requirement “serves three purposes: (1) protecting the safety of occupants of a dwelling and the police by reducing violence; (2) preventing the destruction of property; and (3) protecting the privacy of occupants”)(citation omitted); [United States v. Brown](#), 52 F.3d 415, 421 (2d Cir. 1995), cert. denied, 516 U.S. 1068 (1996).

5. **The Circuits are Split as to Whether § 3109 Applies to Buildings Other Than Dwellings.** There is currently a split among the circuits as to whether [§ 3109](#) applies only to dwellings. The majority of circuits hold that the requirements of the statute are inapplicable when a warrant is being served at a commercial premise. See, e.g., [United States v. Lopez](#), 898 F.2d 1505 (11th Cir. 1990)(“[Section 3109](#) applies only to a house and its curtilage, and does not apply to commercial buildings”)(citation omitted); [United States v. Francis](#), 646 F.2d 251, 256 (6th Cir.), cert. denied, 454 U.S. 1082 (1981)(“We continue to restrict the application of [§ 3109](#) to dwellings and buildings within the curtilage, the extent of the rule as it existed at common law”); [United States v. Agrusa](#), 541 F.2d 690, 700 (8th Cir. 1976), cert. denied, 429 U.S. 1045 (1977); [United States v. Johns](#), 466 F.2d 1364, 1365 (5th Cir. 1972). However, two circuits do require compliance with [§ 3109](#) at a commercial premise. [United States v. Case](#), 435 F.2d 766, 770 n.1 (7th Cir. 1970)(“Although [§ 3109](#) literally applies only to ‘houses,’ it, like the Fourth Amendment itself which refers to houses, has been held to include commercial establishments”); [United States v. Phillips](#), 497 F.2d 1131, 1133-1134 (9th Cir. 1974).
6. **Officers are Not Required to “Knock and Announce” When No One is Home.** When law enforcement officers are aware that no one is present during the execution of a search or arrest warrant, they are not required to “knock and announce” prior to entry. See, e.g., [United States v. DeBuse](#), 289 F.3d 1072, 1075 (8th Cir. 2002)(Noting “the Fourth Amendment does not require notice to an absent homeowner before execution of a search for which a warrant has issued”); [United States v. Valencia-Roldan](#), 893 F.2d 1080, 1081 n.1 (9th Cir.), cert. denied, 495 U.S. 935 (1990); [United States v. De Lutis](#), 722 F.2d 902, 908 (1st Cir. 1983)(Expressing “serious doubt” as to whether absentee owner could raise a claim for violation of [§ 3109](#)). In essence, this is in keeping with the Supreme Court’s holding that “police are not required to comply with the knock and announce statute where doing so would be a “useless gesture.” [Miller v. United States](#), 357 U.S. 301, 310 (1958)(dictum).
7. **A “Breaking” Under § 3109 Does Not Always Require Force.** The Supreme Court has noted that, “although the phrase ‘break open’ implies some use of force, force is not an ‘indispensable element’ of a violation of [section 3109](#).” [United States v. Alejandro](#), 368 F.3d 130, 134 (2d Cir. 2004)(citation omitted). Further, the Court has “concluded that [section 3109](#) ‘basically’ prohibits ‘an unannounced intrusion into a dwelling,’ and listed as examples of such intrusions:
 - a. Officers breaking down a door;
 - b. Forcing open a chain lock on a partially open door;
 - c. Opening a locked door by use of a passkey; or
 - d. Opening a closed but unlocked door.”

Id. at 134 (citations omitted).

8. **The Exclusionary Rule is Inapplicable to Violations of 18 U.S.C. § 3109.** Violation of knock and announce requirements alone will not result in suppression of evidence seized during the execution of a search warrant. ... Hudson v. Michigan, 547 U.S. 586 (2006); United States v. Carvajal, 502 F.3d 54 (2nd Cir. 2007). While the knock and announce rule is a command of the Fourth Amendment, id. at 589, citing Wilson v. Arkansas, 514 U.S. 927, 931-936 (1995), it has never protected “one’s interest in preventing the government from seeing or taking evidence described in a warrant.” Id. at 594. As the interests protected by the rule have nothing to do with the seizure of evidence, the Hudson court held that suppression is not an appropriate remedy for violation. Importantly, however, those who fail to comply with federal or state knock and announce requirements remain exposed to civil liability and agency disciplinary action.
9. **Section 3109 has Three Basic Requirements.** Pursuant to [§ 3109](#), three requirements must be met before a law enforcement officer can use force to “break open” some part of a house when executing a search or arrest warrant.

NOTE: While the following requirements reflect the current state of the law, it should always be remember that, “the focus of the ‘knock and announce’ rule is properly not on what ‘magic words’ are spoken by the police, or whether the police rang the doorbell, but rather on how these words and other actions of the police will be perceived by the occupant.” United States v. Combs, 394 F.3d 739, 744 (9th Cir. 2005) (citation omitted). “The proper trigger point, therefore, is when those inside should have been alerted that the police wanted entry to execute a warrant.” United States v. Spikes, 158 F.3d 913, 925 (6th Cir. 1998), cert. denied, 525 U.S. 1086 (1999).

- a. **An Officer Must First “Knock.”** “Although the principle is commonly referred to as ‘knock and announce,’ the Court’s holding in Wilson requires only an announcement. Similarly the federal statute ... imposes only the requirement that the officer give ‘notice of his authority and purpose.’” United States v. Smith, 63 F.3d 956, 962 (10th Cir. 1995), *vacated and remanded for resentencing by* Smith v. United States, 516 U.S. 1105 (2005). Nevertheless, “[t]he general practice of physically knocking on the door ... is the preferred method of entry.” Combs, 394 F.3d at 794. Thus, the first requirement is that a law enforcement officer first “knock.” This essentially requires that a law enforcement officer give notice of his or her presence in some fashion, such as:
 - 1) **Physically Knocking on the Door Satisfies This Requirement.** See, e.g., United States v. Spriggs, 996 F.2d 320 (D.C. Cir.), cert. denied, 510 U.S. 938 (1993)(Agents complied with [§ 3109](#) where “they knocked once on the door and announced ‘Police, search warrant’ in slightly above normal tone of voice”).
 - 2) **Placing a Phone Call to the Home Satisfies This Requirement.** See United States v. Cueto, 611 F.2d 1056, 1062 (5th Cir. 1980)(Agents “complied with both the letter and spirit of [section 3109](#)” where, *inter alia*, “agents surrounded the hotel room, one agent telephoned its occupants, identified himself, and asked the occupants to come outside”).

- 3) **Utilizing a Bullhorn Satisfies This Requirement.** See, e.g., [United States v. James](#), 528 F.2d 999, 1017 (5th Cir.), reh'g denied, 532 F.2d 1054 (1976) and cert. denied, 429 U.S. 959 (1976), reh'g denied, 429 U.S. 1055 (1977) ("The announcement by the FBI Agents over the bullhorn of the authority and purposes of the officers present, while standing in plain view in daylight at the RNA premises, which was repeated the second time, fully satisfied the requirements of [18 U.S.C. § 3109](#)"); [Spikes](#), 158 F.3d at 927 (Use of bullhorn caused neighbors to exit homes to watch execution of warrant, prompting court to note: "When the execution of a warrant becomes a spectator sport, common sense dictates that the 'knock and announce' rule has been complied with").
 - 4) **Utilizing a Loudspeaker Satisfies the Requirement.** See [Combs](#), 394 F.3d at 746.
- b. **An Officer Must Also Announce His Identity and Authority.** Second, a law enforcement officer must announce his or her identity and authority. See, e.g., [Miller v. United States](#), 357 U.S. 301, 309-10 (1958); [United States v. Manning](#), 448 F.2d 992, 1001-02 (2d Cir.) (en banc), cert. denied, 404 U.S. 995 (1971); [United States v. Leon](#), 487 F.2d 389, 394 (9th Cir. 1973), cert. denied, 417 U.S. 933 (1974); [United States v. Wysong](#), 528 F.2d 345, 348 (9th Cir. 1976); [United States v. Wylie](#), 462 F.2d 1178, 1188 (D.C. Cir. 1972).
- c. **Before Force Can Be Used to Enter, an Officer Must be Refused or Denied Admittance.** Third, a law enforcement officer must be refused or denied admittance. "It is well established that the phrase 'refused admittance' is not restricted to an affirmative refusal, but encompasses circumstances that constitute constructive or reasonably inferred refusal." [United States v. Bonner](#), 874 F.2d 822, 824 (D.C. Cir. 1989) (citations omitted). A refusal of admittance can take a variety of forms.
- 1) **Silence Can Be Construed as Refusal of Entry.** An affirmative refusal of entry is not required by [§ 3109](#). Instead, refusal may be implied in some instances. For example, "[a] refusal to comply with an officer's order to 'open up' can be inferred from silence," [United States v. Granville](#), 222 F.3d 1214, 1218 (9th Cir. 2000) (citation omitted). However, this is only true in situations where a reasonable period of time has passed. Thus, after a reasonable period of time, silence may be construed as constructive refusal of admittance.
 - a) **What Constitutes a "Reasonable Period of Time" is Determined By the Totality of the Circumstances.** Unfortunately, "no case from the Supreme Court ... has yet specifically addressed how long officers must wait before entering a residence after knocking and announcing their presence." [United States v. Jones](#), 133 F.3d 358, 361 (5th Cir.), cert. denied, 523 U.S. 1144 (1998).

- (1) **“Reasonableness” is Fact Intensive.** Instead, rulings on what constitutes a “reasonable” amount of time are “highly contextual, turning on factors that indicate whether the amount of time given was enough for the defendant to ascertain who was at the door and to respond, and whether officers’ safety was at risk.” [Sargent](#), 319 F.3d at 11 (citations omitted). See also [United States v. Vesey](#), 338 F.3d 913, 915 (8th Cir. 2003)(Noting “whether police officers have waited long enough after knocking to infer that they have been constructively denied admittance, and thus may enter, ‘does not turn on any hard and fast time limit, but depends upon the circumstances confronting the officer serving the warrant’”)(citation omitted).
 - (2) **Facts Known to the Officer Are What’s Important in Determining Reasonableness.** “The facts known to the police are what count in judging reasonable waiting time[s]” for purposes of [§ 3109](#). [Banks](#), 540 U.S. at 527.
- b) **Factors to Consider in Determining Whether Officers Waited a Reasonable Period of Time.** Generally speaking, “[t]he amount of time officers need to wait before entering a home necessarily depends on how much time it would take for a person in the house to open the door.” [Spikes](#), 158 F.3d at 927. Factors that courts have considered in making this determination include, but are not limited to, the following:
- (1) **The Time of Day.** “When the police execute a warrant in the dead of night or have some other reason to believe that a prompt response from the homeowner would be unlikely, the length of time the officers should wait increases.” [Spikes](#), 158 F.3d at 927. “Correspondingly, when officers execute a warrant in the middle of the day ... the length of time the officers must tarry outside diminishes.” [Id.](#) See also [Vesey](#), 338 F.3d at 916 (Entry was reasonable based in part on the fact that the officers “arrived in the afternoon, when it was likely that any occupants were awake”); [United States v. Chavez-Miranda](#), 306 F.3d 973, 980 (9th Cir. 2002), [cert. denied](#), 537 U.S. 1217 (2003)(Noting that, in evaluating reasonableness, courts should consider, among other factors, “the time of day” the warrant was executed); [United States v. Gallegos](#), 314 F.3d 456, 460 (10th Cir. 2003)(“We have held that when a warrant is executed in the middle of the day, ‘the amount of time the officers need to wait before entering is generally reduced’”).

- (2) **The Size and Physical Layout of the Residence.** The size and physical layout of the residence is also a factor that must be considered in determining the reasonableness of an entry. So, while a larger residence might require greater amount of time, a smaller residence would require a lesser amount. See, e.g., [Vesey](#), 338 F.3d at 916 (Entry reasonable based in part on the “size of the apartment,” which the court classified as “small”); [Gallegos](#), 314 F.3d at 461 (Noting “the physical characteristics of the [suspect’s] residence are relevant to our determination”); [Chavez-Miranda](#), 306 F.3d at 980 (Same).
- (3) **The Nature of the Crime.** The nature of the crime under investigation may be considered in determining the reasonableness of an entry. This is especially true in cases involving drugs. See, e.g., [United States v. One Parcel of Real Property](#), 873 F.2d 7, 9 (1st Cir.), cert. denied sub nom. [Latraverse v. United States](#), 493 U.S. 891 (1989) (“The fact that the officers had probable cause to believe that the occupants possessed cocaine, a substance that is easily and quickly removed down a toilet, is additional justification for the shorter wait before entry”); [Vesey](#), 338 F.3d at 915 (Noting “the suspected presence of drugs in the place to be searched has been held to lessen the time that police officers are required to wait”); [Spikes](#), 158 F.3d at 926 (Noting “the presence of drugs in the place to be searched, while not a conclusive factor, lessens the length of time law enforcement must ordinarily wait outside before entering a residence”).
- (4) **Any Evidence Demonstrating Guilt.** Evidence demonstrating guilt is a factor that may be considered in determining the reasonableness of an entry. See [Chavez-Miranda](#), 306 F.3d at 980; [Doran v. Eckhold](#), 409 F.3d 958, 965-67 (8th Cir. 2005) (evidence of drug distribution found in garbage).
- (5) **Other Observations Supporting a Forced Entry.** Other observations supported forced entry may be considered, including, for example, defensive measures taken by the residents of the premises. See, e.g., [Spikes](#), 158 F.3d at 926 (Where suspects took defensive measures, such as “the use of police scanning equipment, the placement of lookouts in various strategic places within the home, and, most importantly, the presence of guns and armed guards,” the officers “did not need to wait long enough for a barrage of bullets from within before concluding that they had given the occupants enough time to respond to their request for entry”).

- c) **Numerous Cases Have Considered What a “Reasonable Period of Time” is for Purposes of § 3109.** While there is no “bright line” standard for what a “reasonable” period of time is before entering, numerous circuits have addressed the issue. The following selection of cases is taken directly from [Jones](#), *supra*.

- (1) **Five Seconds of Silence or Less Generally Found to Violate § 3109.** “Generally, a delay of five-seconds or less after knocking and announcing has been held a violation of § 3109.” [Jones](#), 133 F.3d at 361. See, e.g., [United States v. Moore](#), 91 F.3d 96, 98 (10th Cir. 1996)(Officers waited 3 seconds at most and the Government failed even to allege that the officers harbored a concern for their safety); [United States v. Lucht](#), 18 F.3d 541, 550-51 (8th Cir. 1994) (Waiting 3 to 5 seconds before entering was not long enough); [United States v. Rodriguez](#), 663 F. Supp. 585, 587-88 (D.D.C. 1987)(Delay of 3 to 5 seconds was insufficient); [United States v. Marts](#), 986 F.2d 1216, 1217-18 (8th Cir. 1993) (Lapse of less than 5 seconds held not sufficient to infer refusal of admittance necessary to comply with § 3109); [United States v. Nabors](#), 901 F.2d 1351, 1355 (6th Cir. 1990) (Forced entry only seconds after announcing the officers' authority and purpose must be "carefully scrutinized"); [United States v. Mendonsa](#), 989 F.2d 366, 370 (9th Cir. 1993)(Waiting 3 to 5 seconds was insufficient).
- (2) **Five Seconds or More of Silence Generally Found to Satisfy § 3109.** “However, when officers have waited more than 5 seconds, the courts have generally held that there was no violation of § 3109.” [Jones](#), 133 F.3d at 361. See, e.g., [Vesey](#), 338 F.3d at 916 (“Given the size of the apartment, the time of day, the lack of any verbal response, and the suspected presence of drugs, we conclude that ten seconds was a reasonable period for the police to wait before their forced entry”); [United States v. Markling](#), 7 F.3d 1309, 1318 (7th Cir. 1993)(Officers waited 7 seconds before starting to try to knock the door down); [United States v. Spriggs](#), 996 F.2d 320, 322-23 (D.C. Cir.), *cert. denied*, 510 U.S. 938 (1993) (Officers waited 15 seconds before attempting to enter); [United States v. Ramos](#), 923 F.2d 1346, 1355-56 (9th Cir. 1991) *rev'd on other grounds and remanded by* [United States v. Ruiz](#), 257 F.3d 1030 (9th Cir. 2001) (After two requests and 45 seconds); [United States v. Myers](#), 106 F.3d 936, 940 (10th Cir.), *cert. denied*, 520 U.S. 1270 (1997) (Agents waited 10 seconds before battering the door down); [United States v. Knapp](#), 1 F.3d 1026, 1030-31 (10th Cir. 1993)(10 to 12 seconds was sufficient to wait); [United States v. Gatewood](#), 60 F.3d 248, 250 (6th Cir. 1995)(No violation when officers waited about 10 seconds between announcement and entry).

- 2) **Sounds of Flight by the Occupants May Be Construed as Refusal of Admittance.** The sounds of flight by the occupants of the residence can be construed as refusal or denial of admittance. See, e.g., [United States v. Gillaum](#), 372 F.3d 848, 855 (7th Cir. 2004)(Holding “the sound of footsteps coming from inside the apartment and not moving closer to the entry door was sufficient for [the officer] to order the forcible entry and disregard the knock and announce requirement”); [United States v. Stiver](#), 9 F.3d 298, 302 (3rd Cir. 1993), cert. denied, 510 U.S. 1136 (1994)(“When [the officers] announced their presence, they heard heavy and hurried footsteps leading away from the door. Under these circumstances, the officers did not violate the common law rule by entering without waiting for someone to open the door”); [Bonner](#), 874 F.2d at 826 (Refusal of admittance inferred because, *inter alia*, officers “heard footsteps running from the door”); [United States v. Pennington](#), 328 F.3d 215, 221 (6th Cir. 2003)(Sounds of flight from inside the residence “would indicate to a reasonable police officer that the request for entry was being effectively denied, that the person inside the home was taking some type of evasive action, including the possible destruction of contraband, and that the person inside the home was aware that police were seeking entry to his home”).
- 3) **Sounds of Evidence Being Destroyed May Be Construed as Refusal of Admittance.** Refusal or denial of admittance can also be inferred from the sounds of evidence being destroyed. See, e.g., [Masiello v. United States](#), 317 F.2d 121 (D.C. Cir. 1963)(Commotion heard through the door qualified as refusal of admittance because it meant “the occupants were very likely engaged in what might be called ‘standard emergency procedure’ of destroying the evidence”); [United States v. Anderson](#), 39 F.3d 331, 346 (D.C. Cir. 1994), rev’d on other grounds, 59 F.3d 1323 (D.C. Cir. 1995)(en banc)(Refusal of admittance where “the police heard noises consistent with the destruction of evidence emanating from within the apartment, and ... the persons inside made no effort to respond to the officers’ knock”).
- 4) **Verbal Refusal May Be Construed as Refusal of Admittance.** A refusal of admittance may be expressly made, such as when the occupant of a residence yells for a law enforcement officer to “go away.” However “[t]he phrase ‘refused admittance’ is not restricted to an affirmative refusal. Rarely if ever is there an affirmative refusal. More often the officers meet with silence as the occupants seek to destroy evidence or escape. Accordingly, whether the failure to respond to an officer’s knock constitutes refused admittance is a question of the circumstances.” [United States v. Ortiz](#), 445 F.2d 1100, 1102 n.2 (10th Cir.), cert. denied, 404 U.S. 993 (1971)(internal citations omitted).
- 5) **Gunfire From Inside the Residence May Be Construed as Refusal of Admittance.** Finally, refusal of admittance may be inferred from a suspect’s discharge of a firearm upon receiving notice of a law enforcement officer’s purpose and authority.

10. When Exigent Circumstances Exist, a Law Enforcement Officer May Dispense With the Requirements of [§ 3109](#). “The Fourth Amendment does not forbid no-knock searches. Rather, it requires that searching officers justify dispensing with the knock-and-announce requirement.” [United States v. Scroggins](#), 361 F.3d 1075, 1081 (8th Cir. 2004). Thus, law enforcement officers may also use force to enter a residence when exigent circumstances exist. See [Banks](#), 540 U.S. at 43 (Noting “that [§ 3109](#) is subject to an exigent circumstances exception ... which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place”)(internal citation omitted). In such cases, the officers may dispense with the notice and authority requirements of [§ 3109](#). See, e.g., [United States v. Hatfield](#), 365 F.3d 332, 339 (4th Cir. 2004)(Noting that, while Supreme Court cases have established that “any forcible entry into a dwelling must be preceded by both a knock and notice of identity and authority,” there are exceptions to the rule that “occur when government agents encounter circumstances that present a threat of physical violence and when evidence may be destroyed if agents announce their presence”); [United States v. Grogins](#), 163 F.3d 795, 797 (4th Cir. 1998)(Noting that the “knock-and-announce requirement may be excused by exigent circumstances”).
- a. **A Law Enforcement Officer Must Have Reasonable Suspicion That Exigent Circumstances Exist.** In order to use force to enter a residence without complying with the “knock and announce” requirements of [§ 3109](#), law enforcement officers “must have more than a mere hunch or suspicion before an exigency can excuse the necessity for knocking and announcing their presence.” [United States v. Bates](#), 84 F.3d 790, 695 (6th Cir. 1996). Instead, the officers “must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.” [Richards v. Wisconsin](#), 520 U.S. 385, 394 (1997).
- b. There are Five Common Exigencies (Exceptions to [§ 3109](#)). The primary exigent circumstances that allow officers to disregard [§ 3109](#) are:

- 1) Danger to Officers or Third Parties May Excuse Compliance With [§ 3109](#). Where reasonable suspicion exists to believe that "knocking and announcing" could result in danger to law enforcement officers or third parties, the requirements of [§ 3109](#) may be excused. See, e.g., [Richards](#), 520 U.S. at 394; [Smith](#), 386 F.3d at 759 (Exigent circumstances that may excuse compliance with knock and announce rule include those where "the officers have a justified belief that someone within is in imminent peril of bodily harm"); [Brown](#), 52 F.3d at 424 ("Exigent circumstances will excuse non-compliance with the knock and announce requirement when the officers, 'after considering the particular facts regarding the premises to be searched and the circumstances surrounding the execution of the warrant,' reasonably believe there is an urgent need to force entry The need to force entry may result from danger to the safety of the entering officers or from the imminent destruction of evidence"); [United States v. Peterson](#), 353 F.3d 1045, 1049-50 (9th Cir. 2003)(Where police reasonably believed residence contained explosives, defendant had claimed readiness to "blow some shit up ... at any time," and defendant was known to carry a concealed weapon illegally, exigent circumstances justified entry); [United States v. Murphy](#), 69 F.3d 237, 243 (8th Cir. 1995), cert. denied, 516 U.S. 1153 (1996)("In Murphy's case, besides fearing for their own safety, officers also feared for the safety of innocent citizens in the neighborhood"); [United States v. Gambrell](#), 178 F.3d 927, 929 (7th Cir.), cert. denied, 528 U.S. 920 (1999)("The information Agent Eckerty learned from his informant - that Cookie regularly sold drugs out of her apartment; that she answered the door wearing a .25 caliber gun in her front pocket; that she and her roommate regularly carried guns in the apartment; that, in addition to the gun strapped on Cookie, there were other guns, drugs, and drug paraphernalia in the apartment--was enough to create a reasonable suspicion that an announced entry would have subjected the officers to a substantial risk of harm"); [Sargent](#), 319 F.3d at 12 ("In order to justify entry without knocking on the basis of concern for officers' safety, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous")(citation and internal quotation marks omitted).
- 2) A Suspect's Significant Criminal History May Be Considered In Determining Whether Compliance With [§ 3109](#) is Required. "On occasion, a suspect's significant criminal history of violence may provide the necessary additional specific information justifying a no-knock entry." [United States v. Musa](#), 401 F.3d 1208, 1213 (10th Cir. 2005)(Upholding "no-knock" entry in part because of the defendant's extensive criminal history, which included convictions for felony auto theft, marijuana possession, and being a felon-in-possession of a firearm, as well as five other arrests: (1) for domestic battery, obstruction, and terroristic threat; (2) for domestic battery, obstruction, possession of drug paraphernalia, and battery on a law-enforcement officer; (3) for domestic battery and unlawful restraint; (4) for domestic battery; and (5) for possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, and traffic violations).

- 3) Destruction of Evidence May Excuse Compliance With [§ 3109](#). Where reasonable suspicion exists that knocking and announcing would result in the destruction of evidence, the requirements of [§ 3109](#) may be excused. See, e.g., [Richards](#), 520 U.S. at 394 (Notice may be excused where to do so would allow "the destruction of evidence"); [Smith](#), 386 F.3d at 759 (Exigent circumstances that may excuse compliance with knock and announce rule include those where "the officers have a justified belief that those within are aware of their presence and are engaged in escape or the destruction of evidence"); [Peterson](#), 353 F.3d at 1050 ("Once the occupants knew police were outside, the suspected presence of drugs - the quintessential disposable contraband - provided yet another justification for the no-knock entry"); [Brown](#), 52 F.3d at 424 ("The need to force entry may result ... from the imminent destruction of evidence").
- 4) Compliance With [§ 3109](#) May Be Excused Where Knocking and Announcing Would Be a "Useless Gesture." Where "knocking and announcing" would be a "useless gesture," as when the suspect is aware of a law enforcement presence, the requirements of [§ 3109](#) may be excused. See, e.g., [Richards](#) *supra* at 396 (Entry without notice allowed, in part, because of "petitioner's apparent recognition of the officers"); [Miller v. United States](#), 357 U.S. 301, 310 (1958) (dictum) ("It may be that, without an express announcement of purpose, the facts known to officers would justify them in being virtually certain that the petitioner already knows their purpose so that an announcement would be a useless gesture"); [Smith](#), 386 F.3d at 759 (Exigent circumstances that may excuse compliance with knock and announce rule include those where "the persons within the residence already know of the officers' authority and purpose"); [Peterson](#), 353 F.3d at 1049 (Knocking and announcing would have been futile where "just as this announcement was about to be made, [the defendant] unexpectedly opened the door, saw that police were outside, and attempted to deny them entry"; as noted by the court: "Just as one cannot close a door that is already closed, one cannot 'announce' a presence that is already known"); [United States v. Tracy](#), 835 F.2d 1267, 1270 (8th Cir.), cert. denied, 486 U.S. 1014 (1988) ("Announcement of purpose is excused when it constitutes a useless gesture because the 'facts known to [the] officers justify them in being virtually certain the [persons to be apprehended] already know their purpose'" (citation omitted)).

- 5) A Law Enforcement Officer May Also Utilize a Ruse to Avoid Implicating [§ 3109](#). “It is well-established that ‘in the detection of many types of crime, the Government is entitled to use decoys and conceal the identity of its agents.’” [Alejandro](#), 368 F.3d at 136-37 (citation omitted). For that reason, “[a]n entry obtained without force by ruse or deception is not a violation of [section 3109](#).” [United States v. Defeis](#), 530 F.2d 14, 15 (5th Cir.), cert. denied, 429 U.S. 830 (1976). See also [Alejandro](#), 368 F.3d at 137 (Officer’s announcement that there was a gas leak in the apartment and that he (the officer) was with the gas company was a permissible ruse); [Linbrugger v. Abercia](#), 363 F.3d 537, 541 (5th Cir. 2004) (“As long as police officers do not use force, they may attempt to gain entry to a dwelling by deception”)[citing [Lewis v. United States](#), 385 U.S. 206, 211-12 (1966)]; [United States v. Contreras-Ceballos](#), 999 F.2d 432, 435 (9th Cir. 1993) (“A law enforcement officer’s use of a ruse to gain admittance does not implicate [section 3109](#) because it entails no breaking”); and [United States v. Raines](#), 536 F.2d 796, 800 (8th Cir.), cert. denied, 429 U.S. 925 (1976) (“A police entry into a private home by invitation without force, though the invitation be obtained by ruse, is not a breaking and does not invoke the common law requirement of prior announcement of authority and purpose, codified in [§ 3109](#)”).

NOTE: It should be remembered that, if an attempted entry by ruse fails, “the knock-and-announce rule continues to apply to a later forcible entry.” [Linbrugger](#), 363 F.3d at 542. See, e.g., [Richards](#), 520 U.S. at 388 (Finding that, after a failed entry by deception, the officers’ noncompliance with the knock-and-announce requirement was reasonable).

- 6) When a Law Enforcement Officer is in “Hot Pursuit,” Compliance With [§ 3109](#) May Be Excused. Law enforcement officers who are in “hot pursuit” of a suspect need not pause at the front door of a residence in order to “knock and announce” their presence. See, e.g., [United States v. Flores](#), 540 F.2d 432, 435 (9th Cir. 1976) (“Entry in ‘hot pursuit’ has always been considered an exception to the knock and announce provisions of this section”) (citations omitted).
11. Use of Force to Enter a Residence is Permissible Once the Requirements of [§ 3109](#) Have Been Fulfilled or Exigent Circumstances Exist. Once the requirements of [§ 3109](#) have been fulfilled, or exigent circumstances exist, a law enforcement officer may use force to “break open” a door or window to the residence. In its most basic form, “entry without consent ordinarily amounts to ‘breaking’ under [Title 18 U.S.C. § 3109](#).” [United States v. Harris](#), 435 F.2d 74, 82 (D.C. Cir. 1970), cert. denied, 402 U.S. 986 (1971). This includes situations where “officers break down a door, force open a chain lock on a partially open door, open a locked door by use of a passkey, or ... open a closed but unlocked door.” [Sabbath v. United States](#), 391 U.S. 585, 590 (1968).
- a. **The Statute Does Not Apply When the Door is Already Open.** Numerous courts have found that “the statute does not apply to officers who enter through open doors.” [United States v. Phillips](#), 149 F.3d 1026, 1029 (9th Cir. 1998), cert. denied, 526 U.S. 1052 (1999). See also [United States v. Mendoza](#), 281 F.3d 712, 717 (8th Cir.), cert. denied, 537 U.S. 1004 (2002) (“Most circuits courts deciding the issue have concluded when the door is open, the rule is vitiated”); [United States v. Kemp](#), 12 F.3d 1140 (D.C. Cir. 1994); [United States v. Remigio](#), 767 F.2d 730 (10th Cir.), cert. denied, 474 U.S. 1009 (1985).

- b. **The Statute Does Not Apply When the Knocking Opened the Door.** Similarly, the statute will not apply when a knock on a door causes the door to open, so long as the knock is done with "ordinary" force. See [Kemp](#), 12 F.3d at 1141 ("There is no 'breaking' at least where (1) the officer used only the force ordinarily used to knock upon, not to knock down, a door; and (2) an occupant is made aware of the officer's presence and purpose before the officers enters the premises").
- 12. **Law Enforcement Officers May seek "No-Knock" Warrants.** In the right circumstances, a law enforcement officer may request a "no-knock" warrant, which allows them to dispense with the requirements to knock and announce before entry.
 - a. **What Are "No-Knock" Warrants?** In sum, "[w]hen the police obtain a no-knock warrant, they have anticipated exigent circumstances before searching, and have asked for pre-search judicial approval to enter without knocking." [Scroggins](#), 361 F.3d at 1081.
 - b. **The Benefits of "No-Knock" Warrants.** "The issuance of a warrant with a no knock provision potentially insulates the police against the subsequent finding that exigent circumstances, as defined in [Richards](#), did not exist." [United States v. Tisdale](#), 195 F.3d 70, 72 (2d Cir. 1999). See also [Scroggins](#), 361 F.3d at 1082 ("Although the standards are the same regardless of whether the police visit a judge before or after they search, if they do so beforehand, and the judge is wrong, the police can rely upon the [Leon](#) good-faith exception").
 - c. **No-Knock Warrants v. Exigent Circumstances.** "The showing the police must make to obtain a no-knock warrant is the same showing they must make to justify their own decision to dispense with the knock-and-announce requirement. Only the timing differs." [Scroggins](#), 361 F.3d at 1082. See also [Banks](#), 540 U.S. at 36 ("When a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a 'no-knock' entry").
 - d. **Disapproval of a Request For a "No-Knock" Warrant Does Not Always Preclude a "No-Knock" Entry.** A judicial officer's decision not to authorize a no-knock entry does not preclude officers, when executing a warrant, from concluding that it would be reasonable to enter without knocking and announcing. As the Supreme Court has noted: "The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time. But ... a magistrate's decision not to authorize a no-knock entry should not be interpreted to remove the officers' authority to exercise independent judgment concerning the wisdom of a no-knock entry at the time the warrant is being executed." [Richards](#), 520 U.S. at 396 n.7.

- e. **The Supreme Court Has Endorsed the Issuance of “No-Knock Warrants.”** “The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time.” Richards, 520 U.S. 396 n.7. According to the Department of Justice Office of Legal Counsel, “officers need not take affirmative steps to make an independent re-verification of the circumstances already recognized by a magistrate in issuing a no-knock warrant, [but] such a warrant does not entitle officers to disregard reliable information clearly negating the existence of exigent circumstances when they actually receive such information before execution of the warrant.” Thus, “when agents have reason to believe that knocking and announcing their presence would allow the destruction of evidence, would be dangerous, or would be futile, agents should request that the magistrate judge issue a no-knock warrant.” *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, DOJ, at 75 (March 2001).

L. EPO #12: IDENTIFY THOSE OFFICIALS WHO HAVE THE AUTHORITY TO ISSUE FEDERAL SEARCH WARRANTS

1. General Rule – [Rule 41](#) and [Rule 1](#) of the Federal Rules of Criminal Procedure Dictate Who May Issue a Federal Search Warrant. The rules regarding who may issue Federal search warrants are contained in [Rule 41](#) and [Rule 1](#) of the Federal Rules of Criminal Procedure.
2. **Who May Issue Federal Search Warrants?**
 - a. **United States Magistrate Judge** – [Rule 41\(b\)](#)
 - b. **United States District Court Judge** – [Rule 1\(c\)](#) (Providing that, “when the[] rules authorize a magistrate judge to act, any other federal judge may also act”).
 - c. **United States Circuit Court of Appeals Judge** – [Rule 1\(c\)](#)
 - d. **United States Supreme Court Justice** – [Rule 1\(c\)](#)
 - e. **State Court Judge of a Court of Record** – [Rule 41\(b\)](#). “State judges were included in [Rule 41](#) because they are far more plentiful than the small corps of federal magistrates.” United States v. Burke, 517 F.2d 377, 382 (2d Cir. 1975).
3. **State Judges Whom Issue Federal Search Warrants Must Be of a Court of Record.** Questions often arise as to whether a state court judge is a “court of record” as required by [Rule 41\(b\)](#). “Under [[Rule 41\(b\)](#)], whether an individual is a judge of a state court of record is governed by state law.” United States v. Martinez-Zayas, 857 F.2d 122, 135 (3rd Cir. 1988). However, “it is generally accepted that the one essential feature necessary to constitute a court of record is that a permanent record of the proceedings of the court must be made and kept.” Dekalb County v. Deason, 144 S.E.2d 446, 447 (Ga. 1965).
4. **There are also Jurisdictional Requirements for the Issuance of Federal Search Warrants.** Various statutory provisions provide jurisdictional limits on the issuance of Federal search warrants.
 - a. **Rule 41 Provides Some Jurisdictional Requirements for the Issuance of Federal Search Warrants.** Pursuant to [Rule 41\(b\)](#), jurisdictional requirements exist in the issuance of Federal search warrants.

- 1) **Within the District.** Federal search warrants may be issued by federal judges, or a judge from a state court of record, "to search for and seize a person or property located within the district." [Rule 41\(b\)\(1\).](#)
 - 2) **Outside the District.** "[A] magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed." [Rule 41\(b\)\(2\).](#)
 - 3) **Terrorism Investigations.** "[A] magistrate judge - in an investigation of domestic terrorism or international terrorism - having authority in any district in which activities related to the terrorism may have occurred, may issue a warrant for a person or property within or outside that district." [Rule 41\(b\)\(3\).](#)
 - 4) **Tracking Devices.** "[A] magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both." [Rule 41\(b\)\(4\).](#)
 - 5) **Title 18 U.S.C. § 2703(a)** and (b). Allow Judges With Jurisdiction Over the Offense to Issue Nationwide Search Warrants for Stored Wire or Electronic Communications. Pursuant to [Title 18 U.S.C. § 2703\(a\)](#) and (b), law enforcement officers may obtain Federal search warrants for the contents of wire or electronic communications held in storage by either an electronic communications service or remote computing service from "a court with jurisdiction over the offense under investigation." In sum, this means that a law enforcement officer may obtain a Federal search warrant from a Federal judge who has jurisdiction over the offense in question, although not necessarily the place or item to be searched. For example, this provision would allow a law enforcement officer to obtain a search warrant from a Magistrate Judge in the Southern District of Georgia for electronic files stored on the server of an Internet Service Provider in California.
5. **Magistrate Judges Who Issue Warrants are Required to be "Neutral and Detached."** "The primary reason for the warrant requirement is to interpose a 'neutral and detached magistrate' between the citizen and 'the officer engaged in the often competitive enterprise of ferreting out crime.'" [United States v. Karo](#), 468 U.S. 705, 717 (1984)(emphasis added)(citation omitted). See also [Thompson v. Louisiana](#), 469 U.S. 17, 20 (1984)("We have consistently reaffirmed our understanding that in all cases outside the exceptions to the warrant requirement the Fourth Amendment requires the interposition of a neutral and detached magistrate between the police and the 'persons, houses, papers, and effects' of citizens"). For that reason, the judge who issues the search warrant must be "neutral and detached." See, e.g., [Shadwick v. Tampa](#), 407 U.S. 345, 350 (1972)("An issuing magistrate must meet two tests. He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search").

- a. **Judge Who Issued Warrant and Participated in Search Not Neutral and Detached.** Thus, for example, where the judge who issued the warrant also participated in the search, he was found not to be neutral and detached. [Lo-Ji Sales, Inc. v. New York](#), 442 U.S. 319, 327 (1979).
- b. **State Attorney General is Not Neutral and Detached.** Also, where the issuing authority was the State Attorney General “who was actively in charge of the investigation and later was to be chief prosecutor at the trial,” the “neutral and detached” magistrate requirement was violated. [Coolidge v. New Hampshire](#), 403 U.S. 443, 450 (1971).
- c. **District Attorney is Not Neutral and Detached.** Similarly, if a warrant were to be issued “by the District Attorney himself,” it would not meet the requirements of neutrality and detachment. [Mancusi v. DeForte](#), 392 U.S. 364, 371 (1968).
- d. **Where Magistrate has a Financial Interest in the Issuance of Warrants, He is Not Neutral and Detached.** Finally, where the issuing magistrate has a financial interest in the issuance of search warrants, the magistrate is not “neutral and detached.” [Connally v. Georgia](#), 429 U.S. 245, 250 (1977)(Issuance of warrants by justices of the peace who received financial compensation for each warrant issued held invalid, because it presented a situation “where the defendant [was] subjected to what surely is judicial action by an officer of a court who has ‘a direct, personal, substantial, pecuniary interest’ in his conclusion to issue or to deny the warrant”).

M. EPO #13: IDENTIFY THE COMPONENTS OF AN AFFIDAVIT FOR A SEARCH WARRANT

1. **General Rule – Search Warrants Must Particularly Describe the Place to Be Searched and the Person or Things to Be Seized.** The Supreme Court has recognized that the decision to proceed “by search warrant is a drastic one, and must be carefully circumscribed so as to prevent unauthorized invasions of the sanctity of a man’s home and the privacies of life.” [Berger v. New York](#), 388 U.S. 41, 58 (1967). “General warrants ... are prohibited by the Fourth Amendment. The problem posed by the general warrant is not that of intrusion per se, but of a general, exploratory rummaging in a person’s belongings....” [Andresen v. Maryland](#), 427 U.S. 463, 480 (1976)(citation omitted). As noted by the Supreme Court:

“The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one ‘particularly describing the place to be searched and the persons or things to be seized.’ The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” [Maryland v. Garrison](#), 480 U.S. 79, 84 (1987)(footnote omitted).

Accordingly, any affidavit for a search warrant must particularly describe (1) the place to be searched, and (2) the person or things to be seized. See [Rule 41\(e\)\(2\)](#) (“The warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned”).
2. **Affidavits Must Establish a Nexus Between the Items Sought and the Location to Be Searched.** “It is critical to a showing of probable cause that the affidavit state facts sufficient to justify a conclusion that evidence or contraband will probably be found at the premises to be searched.” [United States v. Hove](#), 848 F.2d 137, 140 (9th Cir. 1988).

- a. **Standard for Establishing a “Nexus.”** Accordingly, an affidavit for search warrant must contain “sufficient information to conclude that a fair probability existed that seizable evidence would be found in the place sought to be searched.” [United States v. Pigrum](#), 922 F.2d 249, 253 (5th Cir. 1991). See also [United States v. Ribeiro](#), 397 F.3d 43, 49 (1st Cir. 2005) (“[T]he application must give someone of ‘reasonable caution’ reason to believe that evidence of a crime will be found at the place to be searched”); [United States v. Carpenter](#), 360 F.3d 591, 594 (6th Cir. 2004) (“There must ... be a ‘nexus between the place to be searched and the evidence sought’”); [United States v. Martin](#), 297 F.3d 1308, 1314 (11th Cir. 2002) (“Specifically, the affidavit should establish a connection between the defendant and the residence to be searched and a link between the residence and any criminal activity”); [United States v. Strother](#), 318 F.3d 64, 70 (1st Cir. 2003) (“A warrant application must demonstrate probable cause to believe that (1) a crime has been committed (the ‘commission’ element), and (2) enumerated evidence of the offense will be found at the place to be searched (the ‘nexus’ element)’”); [United States v. Tellez](#), 217 F.3d 547, 550 (8th Cir. 2000) (“We agree, of course, that there must be evidence of a nexus between the contraband and the place to be searched before a warrant may properly issue ...”).
- b. **Factors to Consider in Determining Whether the “Nexus” Requirement Has Been Satisfied.** The courts have come up with some factors that a magistrate may utilize in determining whether the “nexus” requirement has been satisfied. These factors include:
- 1) Direct Observation;
 - 2) The Nature of the Crime;
 - 3) The Nature of the Items Sought;
 - 4) The Opportunity for Concealment; **and**
 - 5) Normal Inferences as to Where a Criminal Would Hide Evidence.
- See [United States v. Feliz](#), 182 F.3d 82, 88 (1st Cir. 1999), cert. denied, 528 U.S. 1119 (2000); [United States v. Jones](#), 994 F.2d 1051, 1056 (3d Cir. 1993); [United States v. Allen](#), 211 F.3d 970, 976 (6th Cir. 2000) (“[W]here a known person, named to the magistrate, to whose reliability an officer attests with some detail, states that he has seen a particular crime and particular evidence, in the recent past, a neutral and detached magistrate may believe that evidence of a crime will be found”); [United States v. Jackson](#), 756 F.2d 703, 705 (9th Cir. 1985); [United States v. Hendrix](#), 752 F.2d 1226, 1231 (7th Cir.), cert. denied sub nom. Merritt v. United States, 471 U.S. 1021 (1985)(quotation omitted).

- c. **The “Nexus” May Be Established Through Inference.** “The nexus between the objects to be seized and the [place to be] searched need not, and often will not, rest on direct observation, but rather can be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide evidence of a crime.” [Feliz](#), 182 F.3d at 88. Of course, this is not to “suggest that, in all criminal cases, there will automatically be probable cause to search a suspect’s residence.” [Id.](#) Instead, “[a]ll factors must be weighed in each case in order to assess the reasonableness of inferring that evidence of the crime can be found at the suspect’s home.” [Id.](#) In sum, however, “interpreting a search warrant affidavit in the proper ‘commonsense and realistic fashion,’ may result in the inference of probable cause to believe that criminal objects are located in a particular place, such as a suspect’s residence, to which they have not been tied by direct evidence.” [Id.](#) (internal citation omitted). *See also Jones*, 994 F.2d at 1056 (“While ideally every affidavit would contain direct evidence linking the place to be searched to the crime, it is well established that direct evidence is not required for the issuance of a search warrant”).
- d. **Examples.** The two examples listed below illustrate situations in which the required “nexus” can be inferred from the circumstances.
- 1) **Possession of Drugs/Drugs in Residence.** “As a matter of common sense, it is logical to infer that someone in possession of valuable contraband would store that contraband in a safe, accessible location such as his or her residence.” [United States v. Carpenter](#), 341 F.3d 666, 671-72 (8th Cir. 2003) (Affidavit provided information from reliable informant that suspect was in “possession of methamphetamine,” but did not state drugs were at the suspect’s residence).

2) **Dealing of Drugs/Drugs in Residence.** “In the case of drug dealers, evidence is likely to be found where the dealers live.” [United States v. Angulo-Lopez](#), 791 F.2d 1394, 1399 (9th Cir. 1986). See also [United States v. Whitner](#), 219 F.3d 289, 297(3d Cir. 2000)(“In the case of drug dealers, a number of other courts of appeals have held that evidence of involvement in the drug trade is likely to be found where the dealers reside”); [United States v. McClellan](#), 165 F.3d 535, 546 (7th Cir.), cert. denied, 526 U.S. 1125 (1999)(“In issuing a search warrant, a magistrate is entitled to draw reasonable inferences about where the evidence is likely to be kept ... and ... in the case of drug dealers evidence is likely to be found where the dealers live”)(quotation, internal quotations and citations omitted); [United States v. Luloff](#), 15 F.3d 763, 768 (8th Cir. 1993)(Observations of drug trafficking occurring away from dealer’s residence along with officer’s statement in affidavit that drug dealers often store evidence in their residences provided probable cause for search of dealer’s house); [United States v. Thomas](#), 989 F.2d 1252, 1255 (D.C. Cir. 1993)(per curiam)(Observations of drug trafficking occurring away from dealer’s residence can provide probable cause for search of dealer’s house); [United States v. Williams](#), 974 F.2d 480, 482 (4th Cir. 1992)(per curiam)(Affidavit establishing that known drug dealer was residing in a motel room established sufficient probable cause to search motel room for drug paraphernalia); [United States v. Davidson](#), 936 F.2d 856, 859-60 (6th Cir. 1991)(Evidence of pattern of defendant’s involvement in drug-dealing established probable cause to search defendant’s residence although there was no direct evidence of drug dealing occurring at the residence). But see [United States v. Nolan](#), 199 F.3d 1180, 1184 (10th Cir. 1999)(Declining to decide whether evidence of drug trafficking will likely be found where a drug dealer lives).

3. **The Information in the Affidavit Cannot Be “Stale.”** “Probable cause must exist when a warrant is issued, not merely at some earlier time.” [United States v. LaMorie](#), 100 F.3d 547, 554 (8th Cir. 1996). See also [United States v. Ozar](#), 50 F.3d 1440, 1446 (8th Cir.), cert. denied, 516 U.S. 871 (1995). “There is no bright-line test for determining when information is stale.” [United States v. Koelling](#), 992 F.2d 817, 822 (8th Cir. 1993)(citation omitted). Instead, “whether the averments in an affidavit are sufficiently timely to establish probable cause depends on the particular circumstances of the case.” *Id.* See also [United States v. Greene](#), 250 F.3d 471, 480 (6th Cir. 2001)(Holding that “a staleness determination should be flexible, resting on numerous factors”). In deciding whether the information in a warrant affidavit is stale, courts have considered the following factors:

- a. **Age of the Information Contained in the Affidavit.** “Age of the information supporting a warrant application is a factor in determining probable cause. If too old, the information is stale, and probable cause may no longer exist.” [United States v. Harvey](#), 2 F.3d 1318, 1322 (3d Cir. 1993). See also [United States v. McNeese](#), 901 F.2d 585, 597 (7th Cir. 1990)(Emphasizing that, if the information contained in the warrant affidavit is too old, “it is considered stale and probable cause no longer exists”). “Age alone, however, does not determine staleness.” [Harvey](#), 2 F.3d at 1322. See also [United States v. Williams](#), 897 F.2d 1034, 1039 (10th Cir. 1990), cert. denied, 500 U.S. 937 (1991)(“The determination of probable cause is not merely an exercise in counting the days or even months between the facts relied on and the issuance of the warrant”); [United States v. Spikes](#), 158 F.3d 913, 923 (6th Cir. 1998), cert. denied, 525 U.S. 1086 (1999)(noting “the function of a staleness test in the search warrant context is not to create an arbitrary time limitation within which discovered facts must be presented to a magistrate”)(citation omitted), but see [U.S. v. Hython](#), 443 F.3d 480 (6th Cir. 2006) (*Leon* good-faith exception inapplicable where no reasonable officer could conclude that affidavit, which failed to allege any dates of drug transactions, established probable cause).
- b. **Whether the Criminal Activity is Continuing.** “The passage of time is less significant when there is cause to suspect continuing criminal activity.” [Ozar](#), 50 F.3d at 1446. See also [Greene](#), 250 F.3d at 481 (“Evidence of ongoing criminal activity will generally defeat a claim of staleness”); [United States v. Collins](#), 61 F.3d 1379, 1384 (9th Cir.), cert. denied, 516 U.S. 1000 (1995)(Information in affidavit not stale where “more recent information in the affidavit established Collins' continued, unlawful possession of firearms”); [United States v. Pitts](#), 6 F.3d 1366, 1369-1370 (9th Cir. 1993)(“When the evidence sought is of an ongoing criminal business ... greater lapses of time are permitted if the evidence in the affidavit shows the probable existence of the activity at an earlier time”). As a general rule, “the longer the expected duration of the criminal activity ... the more likely that [information] from the seemingly distant past will be relevant to a current investigation.” [United States v. Schaefer](#), 87 F.3d 562, 568 (1st Cir. 1996).
- c. **The Type of Evidence Sought in the Search.** The issue of staleness must also be considered in light of the type of evidence the officers are seeking. As a general rule, “courts demand less current information if the evidence sought is of the sort that can be reasonably be expected to be kept for long periods of time in the place to be searched.” [United States v. McKeever](#), 5 F.3d 863, 866 (5th Cir. 1993). See also [Spikes](#), 158 F.3d at 923 (Among factors to be considered in staleness determination is “the thing to be seized,” and whether it is “perishable and easily transferable or of enduring utility to its holder”); [Schaefer](#), 87 F.3d at 568 (“The warrant did not target items of transient existence, but, rather, featured chattels of relatively dear value and solid construction (including hardware commonly used in the growing and distribution of marijuana), likely to be in service for several years. Since these items possessed enduring worth and utility, information that might be considered ancient history in considering the probable whereabouts of more transient goods would be timely here”).

- d. **The Nature of the Location to Be Searched.** "The target's ownership of the real estate to be searched influences the staleness calculus." [Schaefer](#), 87 F.3d at 568. See also [Spikes](#), 158 F.3d at 923 (Among factors to be considered in staleness determination is "the place to be searched," and whether this place is a "mere criminal forum of convenience or secure operational base"); [United States v. Vaandering](#), 50 F.3d 696, 700 (9th Cir. 1995)(Court recognized that, "in the case of drug dealers, evidence is likely to be found where the dealers live"); [United States v. Jones](#), 159 F.3d 969, 975 (6th Cir. 1998)("The recited statements supporting the search warrant and the fact that 'in the case of drug dealers, evidence is likely to be found where the dealers live,' ... support a finding of probable cause to support the issuance of the warrant")(internal citation omitted).
- e. **Anticipatory Search Warrants.** "An anticipatory warrant is a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place." [United States v. Grubbs](#), 547 U.S. 90, 94 (2006). "There is nothing unreasonable about authorizing a search for tomorrow, not today, when reliable information indicates that, say, the marijuana will reach the house, not now, but then." [United States v. Gendron](#), 18 F.3d 955, 965 (1st Cir. 1994).
- 1) Two prerequisites of probability must be satisfied.
 - 2) It must be true that if the triggering condition occurs, there is a fair probability that contraband or evidence of a crime will be found in a particular place; and
 - 3) There must also be probable cause to believe that the triggering event will occur. [Grubbs](#), 547 U.S. at 96-97.
- f. **The warrant may not be executed unless and until the triggering event occurs.** The triggering event must be described in the affidavit, and must be something more than the mere passage of time. [Grubbs](#), 547 U.S. at 96.
- g. The Fourth Amendment's particularity requirement does not require the triggering condition to be described in the warrant itself. The Fourth Amendment does not set forth some general particularity requirement. It specifies only two matters that must be particularly described in the warrant: "the place to be searched" and "the persons or things to be seized." The United States Supreme Court has previously rejected efforts to expand the scope of this provision to embrace unenumerated matters. [Grubbs](#), 547 U.S. at 97.
4. **Particularity and the Place To Be Searched.** Under the Fourth Amendment, the affidavit and warrant must particularly describe the place to be searched. "[T]he task of a judge issuing a search warrant is to determine if a warrant sufficiently describes the place to be searched, enabling the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that other premises might be mistakenly searched." [United States v. White](#), 356 F.3d 865, 868-69 (8th Cir. 2004).

- a. **The Particular Description of the Place to Be Searched Need Not Be 100% Technically Accurate.** In describing the place to be searched with particularity, a law enforcement officer should be as technically accurate as possible. However, 100% technical accuracy is not required. Instead, “[p]ractical accuracy rather than technical precision controls the determination of whether a search warrant adequately describes the premises to be searched.” [United States v. Lora-Solano](#), 330 F.3d 1288, 1293 (10th Cir. 2003). See also [United States v. Thomas](#), 263 F.3d 805, 807 (8th Cir. 2001), cert. denied, 534 U.S. 1146 (2002)(In upholding warrant under good faith where wrong address found to be “clerical error;” court noted “[t]here are several cases in this circuit finding the particularity requirement satisfied although the description on the search warrant in question was not entirely accurate”); [United States v. Pelayo-Landero](#), 285 F.3d 491, 496 (6th Cir. 2002)(“An error in description does not ... automatically invalidate a search warrant”); [United States v. Addair](#), 168 F.3d 483, at *4 (4th Cir. 1998), cert. denied, 526 U.S. 1105 (1999)(per curiam)(“An erroneous description or a factual mistake in the search warrant will not necessarily invalidate the warrant and the subsequent search”). Examples of errors in the description of the place to be searched that typically arise include:
- 1) **An Incorrect Address.** Generally speaking, “[a] technically wrong address does not invalidate a warrant if it otherwise describes the premises with sufficient particularity so that the police can ascertain and identify the place to be searched.” [Lora-Solano](#), 330 F.3d at 1293. See also [United States v. Durk](#), 149 F.3d 464, 465-66 (6th Cir. 1998)(Warrant upheld even though house numbers in the warrant had been transposed from “4216” to “4612”). Law enforcement officers, however, may not make changes to the warrant, application, or affidavit once the warrant has been issued by a judicial officer. Instead, the law enforcement officer should submit any desired amendment or alteration to a judicial officer for approval. [U.S. v. Hang Le-Thy Tran](#), 433 F.3d 472 (6th Cir. 2006) (finding description of place to be searched legally sufficient despite typographical error in address, but noting officer had no legal authority to make the correction to the warrant or accompanying affidavit).
 - 2) **Incorrect Directions to the Property Are Given.** A warrant may still be sufficiently particular even though directions provided to the property later turn out to be inaccurate or incomplete. See, e.g., [Durk](#), 149 F.3d at 465-66 (Warrant upheld even though “description of Durk’s house as ‘3 houses to the **east** of Grandview’” was incorrect, as “it was three houses to the **west** of Grandview”)(emphasis added); [United States v. Rogers](#), 150 F.3d 851, 855 (8th Cir. 1998), cert. denied, 525 U.S. 1113 (1999)(Warrant upheld even though directions in “affidavit omitted the final turn that the officers had to make in order to find Rogers’ property, and that without this final direction, the search warrant could have led officers to either the Rogers property or the neighboring ... property”).

- b. **The Standard for Testing the Sufficiency of a Warrant's Description is "Reasonable Certainty."** "The test for determining the adequacy of the description of the location to be searched is whether the description is sufficient 'to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched.'" [United States v. Pervaz](#), 118 F.3d 1, 9 (1st Cir. 1997)(citation omitted). See also [Lora-Solano](#), 330 F.3d at 1293 (Same); [Pelayo-Landero](#), 285 F.3d at 496 (Same). Stated differently, the description provided must be "such that the officer with a search warrant can with **reasonable effort** ascertain and identify the place intended." [Steele v. United States](#), 267 U.S. 498, 503 (1925)(emphasis added). See also [United States v. Bieri](#), 21 F.3d 811, 815 (8th Cir.), cert. denied, 513 U.S. 878 (1994)("The warrant must also enable the searcher to locate and identify the premises with reasonable effort"). "To satisfy the particularity requirement, then, the description of the place to be searched must not be so broad as to allow the search of places for which probable cause to search has not been demonstrated, or so vague that an executing officer might mistakenly search a place for which authorization was not granted." [United States v. Petti](#), 973 F.2d 1441, 1444 (9th Cir. 1992), cert. denied, 507 U.S. 1035 (1993). An officer who knows – or should know – that the warrant fails to particularly describe the place to be searched cannot legally execute the warrant. [Jones v. Wilhelm](#), 425 F.3d 455, 465 (7th Cir. 2005) ("Where an officer executing a warrant knows or should have known that a warrant, which was valid when issued, now lacks the necessary particularity, then that officer cannot legally execute the warrant. Furthermore, if an officer obtains information while executing a warrant that puts him on notice of a risk that he could be targeting the wrong location, then the officer must terminate his search.")
- c. **Particular Descriptions of Premises.** In describing with specificity the premises to be searched, numerous issues may arise. Some of the more common are addressed below.
- 1) **The Specific Description of a Premises Differs for Urban and Rural Premises.** "The requisite specificity of a description differs for rural and urban areas and depends heavily on the facts of each case." [United States v. Langston](#), 970 F.2d 692, 703 (10th Cir.), cert. denied, 506 U.S. 965 (1992). See also [United States v. Williams](#), 687 F.2d 290, 293 (9th Cir. 1982)("The necessary specificity of the description will differ as between urban and rural areas and depends heavily upon the factual circumstances of each case").
 - 2) **Multi-Occupancy Buildings.** "A search warrant for an apartment house or hotel or other multiple-occupancy building will usually be held invalid if it fails to describe the particular subunit to be searched with sufficient definiteness to preclude a search of one or more subunits indiscriminately." 2 W. LaFave, *Search and Seizure* § 4.5(b), p. 526 (3d ed. 1996). See also, [United States v. Busk](#), 693 F.2d 28, 31 (3d Cir. 1982) ("A warrant authorizing entry into all apartments in a multiple dwelling house when probable cause has been shown for the search of only one of them does not satisfy the particularity requirement of the Fourth Amendment"); [United States v. Hinton](#), 219 F.2d 324, 326 (7th Cir. 1955)("A warrant which describes an entire building when cause is shown for searching only one apartment is void").

- a) **Where Multi-Occupancy Building Appears to be Single-Occupancy From Outside.** “Some courts have recognized a significant exception to the above rule: If the building in question from its outward appearance would be taken to be a single-occupancy structure and neither the affiant nor other investigating officers nor the executing officers knew or had reason to know of the structure’s actual multiple-occupancy character until execution of the warrant was underway, then the warrant is not defective for failing to specify a subunit within the named building.” 2 W. LaFave, *Search and Seizure* § 4.5(b), p. 529 (3d ed. 1996). See, e.g., [United States v. Logan](#), 998 F.2d 1025, 1032 (D.C. Cir. 1993)(Warrant valid where “the officers had no reason to suspect that the house was not a single family residence when they applied for the warrant” and “there were no signs advertising rooms for rent, no rows of mailboxes, [and] no multiple listing of names at the front door”); [United States v. Kyles](#), 40 F.3d 519, 524 (2d Cir. 1994), cert. denied, 514 U.S. 1044 (1995) (Court upheld search warrant because agents “had no reason to believe” defendant’s room was a separate residence; “factors that indicate a separate residence include separate access from the outside, separate doorbells, and separate mailboxes”); [United States v. Owens](#), 848 F.2d 462 (4th Cir. 1988) (officers entered the wrong apartment in good faith, where officers entered the only apartment fitting the description in the warrant and had no reason to believe the description was inaccurate.)
- b) **Where Multiple Occupants Share a Single Dwelling, a Search of the Entire Residence is Proper.** “A search warrant for the entire premises of a single family residence is valid, notwithstanding the fact that it was issued based on information regarding the alleged illegal activities of one of several occupants of a residence.” [United States v. Ayers](#), 924 F.2d 1468, 1480 (9th Cir. 1991). See also [United States v. Butler](#), 71 F.3d 243, 249 (7th Cir. 1995)(Where entire building is a single unit, “a finding of probable cause as to a portion of the premises is sufficient to support a search of the entire structure”); 2 W. LaFave, *Search and Seizure* § 4.5(b), p. 532 (3d ed. 1996)(“In the community-occupation situation, the courts have held that a single warrant describing the entire premises so occupied is valid and will justify search of the entire premises”).

- d. **Particular Description of Persons.** “The general rule, of course, is essentially the same as that ... for other types of search warrants: the individual to be searched must be described with such particularity that he may be identified with reasonable certainty. The person’s name, if known, should be set forth, but a name is not essential in all cases. Description of the individual by an alias, family relationship to another named person or even as “John Doe’ will suffice when other facts, such as physical description and location, are also included.” 2 W. LaFave, *Search and Seizure* § 4.5(e), p. 538 (3d ed. 1996). See, e.g., [United States v. Espinosa](#), 827 F.2d 604, 607, 611 (9th Cir. 1987), cert. denied, 485 U.S. 968 (1988)(Warrant that referred to defendant as “a male Latin, name unknown, referred to in affidavit as John Doe #1,” and described him as a “male Latin, approximately 35 years of age, 5'8"/5'10", approximately 200 pounds with black hair and black full beard,” held sufficiently particular because “the warrant and the accompanying, incorporated affidavit left the officers with no discretion as to whom to search”); [United States v. Ferrone](#), 438 F.2d 381, 389 (3d Cir.), cert. denied, 402 U.S. 1008 (1971)(Warrant that described “John Doe, a white male with black wavy hair and stocky build observed using the telephone in Apartment 4-C, 1806 Patricia Lane, East McKeesport, Pennsylvania” held valid because “the physical description of appellant, coupled with the precise location at which he could be found, was sufficient”).
- e. **Particular Description of Vehicles.** The particular description of a vehicle should incorporate as many identifying facts about the vehicle as can be obtained. Among some of the more common are:
- 1) Name of Owner;
 - 2) Make and Model of the Vehicle;
 - 3) Year of the Vehicle;
 - 4) Color of the Vehicle;
 - 5) License Number of the Vehicle; and
 - 6) Location of the Vehicle.

Quite clearly, rather detailed descriptions of vehicles listing a number of identifying characteristics together ... are more than sufficient.” 2 W. LaFave, *Search and Seizure* § 4.5(d), p. 538 (3d ed. 1996).

5. **The “Person or Things” to Be Seized Must Also Be Described With Particularity.** As noted above, the Fourth Amendment requires that a warrant particularly describe “the person or thing to be seized.” In essence, the Warrant clause has two distinct requirements contained in it. “First, [the warrant] must describe the place to be searched or things to be seized with sufficient particularity, taking account of the circumstances of the case and the types of items involved.” [United States v. Gourde](#), 382 F.3d 1003, 1008 (9th Cir. 2004)(citation omitted), *rev’d on other grounds by United States v. Gourde*, 440 F.3d 1065 (9th Cir. 2006). And second, “it must be no broader than the probable cause on which it is based.” *Id.* “The constitutional standard for the particularity of a search warrant is that the language must be sufficiently definite to enable the searcher to reasonably ascertain and identify the things authorized to be seized.” [United States v. Saunders](#), 957 F.2d 1488, 1491 (8th Cir.), *cert. denied*, 506 U.S. 889 (1992). “The requirement of particularity arises out of a hostility to the Crown’s practice of issuing “general warrants” taken to authorize the wholesale rummaging through a person’s property in search of contraband or evidence.” [United States v. Upham](#), 168 F.3d 532, 535 (1st Cir.), *cert. denied*, 527 U.S. 1011 (1999). “In testing whether a specific warrant meets the particularity requirement, a court must inquire whether an executing officer reading the description in the warrant would reasonably know what items are to be seized.” [United States v. Kimbrough](#), 69 F.3d 723, 727 (5th Cir. 1995), *cert. denied*, 517 U.S. 1157 (1996).
- a. **The Particularity Requirement Serves Three Purposes.** Courts have noted three distinct rationales underlying the particularity requirement of the Fourth Amendment.
- 1) **The Particularity Requirement Limits the Discretion of the Officer(s) Executing the Warrant.** “The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” [Marron v. United States](#), 275 U.S. 192, 196 (1927). *See also Greene*, 250 F.3d at 476-77 (“Particularity ‘eliminates the danger of unlimited discretion in the executing officer’s determination of what is subject to seizure’”).
 - 2) **The Particularity Requirement Informs the Subject What the Officers Are Entitled to Take.** “The requirement that the warrant itself particularly describe the material to be seized is not only to circumscribe the discretion of the executing officers but also to inform the person subject to the search and seizure what the officers are entitled to take.” [In re Application of Lafayette Academy, Inc. v. United States](#), 610 F.2d 1, 5 (1st Cir. 1979).

- 3) **The Particularity Requirement Defines the Scope of the Search That May Be Conducted.** "The particularity requirement also ensures that a search is confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause." [United States v. Janus Indus.](#), 48 F.3d 1548, 1554 (10th Cir.), cert. denied, 516 U.S. 824 (1995)(citation and internal brackets omitted). See also [United States v. Weber](#), 923 F.2d 1338, 1342 (9th Cir. 1991)(Particular description required "since vague language can cause the officer performing the search to seize objects on the mistaken assumption that they fall within the magistrate's authorization")(internal citations and quotations omitted).

See also [Doe v. Groody](#), 361 F.3d 232, 239 (3rd Cir. 2004)("The requirement of a particular description *in writing* accomplishes three things. First, it memorializes precisely what search or seizure the issuing magistrate intended to permit. Second, it confines the discretion of the officers who are executing the warrant. Third, it 'informs the subject of the search what can be seized')(internal citations and brackets omitted)(emphasis in original).

- b. **Particular Descriptions of Various Types of Objects.** "The specificity required in a warrant varies depending on the circumstances of the case and the type of items involved." [United States v. Spilotro](#), 800 F.2d 959, 963 (9th Cir. 1986). See also [Kimbrough](#), 69 F.3d at 727 ("In circumstances where detailed particularity is impossible, generic language is permissible if it particularizes the types of items to be seized"); [United States v. Ables](#), 167 F.3d 1021, 1033 (6th Cir.), cert. denied, 527 U.S. 1027 (1999)(Noting "the degree of specificity required is flexible and will vary depending on the crime involved and the types of items sought"). Described below are some particularity concerns regarding various types of objects, such as contraband or First Amendment materials.

- 1). **Books or Other First Amendment Materials.** "The constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain." [Roaden v. Kentucky](#), 413 U.S. 496, 504 (1973)[citing [Marcus v. Search Warrant of Property](#), 367 U.S. 717 (1961) and [A Quantity of Copies of Books v. Kansas](#), 378 U.S. 205 (1964)]. See also [Kimbrough](#), 69 F.3d at 727 ("In cases where warrants seek to seize material presumptively protected by the First Amendment, the level to which the items to be seized must be particularly described is heightened").

- 2) **Contraband.** When particularly describing contraband, much more latitude is given to an officer than when describing other types of objects. "A warrant describing items to be seized in broad and generic terms may be valid if the description is as specific as circumstances and nature of the activity under investigation permit." [United States v. Emmons](#), 24 F.3d 1210, 1216 (10th Cir. 1994)(citation and internal quotation omitted). So, for example, "if the purpose of the warrant is to seize illicit property or contraband ... a general reference is permissible." [United States v. Campbell](#), 256 F.3d 381, 389 (6th Cir.), *cert. denied*, 534 U.S. 1032 (2001). See, e.g., [Janus Indus.](#), 48 F.3d at 1554 (In drug paraphernalia case, court found this type of criminal activity "makes it difficult to list with great particularity the precise items desired to be seized which evidence such activity"); [United States v. Spears](#), 965 F.2d 262, 277 (7th Cir.), *cert. denied*, 506 U.S. 989 (1992)("The terms 'controlled substances' and 'materials for packaging controlled substances' are sufficiently specific on their face"); [United States v. Carpenter](#), 341 F.3d 666, 670 (8th Cir. 2003)("We have not clearly defined a degree of specificity or manner of description that is required to properly set forth a drug quantity for the purpose of establishing probable cause, nor do we believe it is wise to do so").
- 3) **Child Pornography.** In situations where officers are seeking to search for child pornography, a description of the items as "child pornography," "sexual conduct between adults and minors," or as material "depicting minors ... engaged in sexually explicit activity" will generally suffice to meet the particularity requirement of the Fourth Amendment. In these situations, "the words used in the warrant describe[] the material sought in such a way that no expert training or experience was needed to clarify and limit their meaning." [United States v. Hall](#), 142 F.3d 988, 996 (7th Cir. 1998). See [Kimbrough](#), 69 F.3d at 727-28 ("Identification of visual depictions of minors engaging in sexually explicit conduct ... leaves little latitude to the officers"); [United States v. Layne](#), 43 F.3d 127, 133 (5th Cir.), *cert. denied*, 514 U.S. 1077 (1995)(Holding that phrase "child pornography" as used in the search warrant in the case "was sufficiently particular in that "[p]olice officers executing either warrant would be sufficiently guided in their discretion to know what items could be seized"); [United States v. Hurt](#), 795 F.2d 765, 772 (9th Cir. 1986), *cert. denied*, 484 U.S. 816 (1987) (Holding warrant particularly described the material to be seized where it authorized search for any material "depicting minors (that is, persons under the age of 16) engaged in sexually explicit activity").
- 4) **Stolen Property.** "Courts have held that a warrant referring to stolen property of a certain type is insufficient if that property is common." [Campbell](#), 256 F.3d at 388-389. See also [Spilotro](#), 800 F.2d at 965 (Description of "gemstones and other items of jewelry" found impermissibly broad).

c. **Particularity and “All Persons” Search Warrants.** An “all persons” search warrant is one that “authoriz[es] the search of every person on a stated premises.” [United States v. Guadarrama](#), 128 F. Supp. 2d 1202, 1206 (E.D. Wis. 2001). Whether an “all persons” warrant is valid under the Fourth Amendment has engendered considerable debate among the courts, both state and federal. “Only a smattering of federal courts have addressed the difficulties presented by the inclusion of ‘all persons’ language in a premises search warrant, and a few others have mentioned it in passing. The most extensive treatment of the question, by far, has been given in the state courts.” [Owens v. Lott](#), 372 F.3d 267, 274 (4th Cir. 2004)(internal citations omitted).. In sum, two approaches have been formed by the courts that have addressed the issue.

- 1) **The Majority View is That “All Persons” Warrants Are Not Per Se Unconstitutional.** “[A] majority of the courts have rejected the idea that an ‘all persons’ warrant could never under any circumstances be constitutional.” [Id.](#) at 275. Thirty jurisdictions adhere to this view, which was expressed in the leading case on this issue, [State v. De Simone](#), 288 A.2d 849 (N.J. 1972). This view holds that “an ‘all persons’ search warrant is authorized under the Fourth Amendment only if the supporting affidavit establishes probable cause that evidence of illegal activity will be found upon every person likely to fall within the warrant’s scope.” [Guadarrama](#), 128 F. Supp. 2d at 1207 (collecting cases). The federal courts that have addressed “all persons” warrants have used this standard.. See [Owens](#), 372 F.3d at 276 (“We agree that the majority view, as articulated in [De Simone](#), correctly holds that an ‘all persons’ warrant can pass constitutional muster if the affidavit and information provided to the magistrate supply enough detailed information to establish probable cause to believe that all persons on the premises at the time of the search are involved in criminal activity”); [Guadarrama](#), 128 F. Supp. 2d at 1212 (Adopting [De Simone](#) as the standard for determining validity of “all persons” warrants); [Marks v. Clarke](#), 102 F.3d 1012, 1029 (9th Cir. 1996)(“[W]e believe that a warrant to search ‘all persons present’ for evidence of a crime may only be obtained when there is reason to believe that all those present will be participants in the suspected criminal activity”); [United States v. Shields](#), 1999 U.S. App. LEXIS 2496, at *7 (10th Cir.) (unpublished), cert. denied, 528 U.S. 839 (1999)(“The crucial question in assessing the validity of an “all persons” warrant is whether there is a ‘sufficient nexus among the criminal activity, the place of the activity, and the persons in the place to establish probable cause”)(citation omitted); [United States v. Graham](#), 563 F. Supp. 149, 151 (W.D.N.Y. 1983)(Upholding seizure of evidence pursuant to “all persons” warrant because affidavit established probable cause to search all persons found in the place to be searched).

- 2) **The Minority View is That “All Persons” Warrants Are Facially Unconstitutional.** The minority view on “all persons” warrants, “held or suggested by eight jurisdictions, is that ‘all persons’ warrants are facially unconstitutional because of their general resemblance to general warrants.” [Guadarrama](#), 128 F. Supp. 2d at 1207. See, e.g., [State v. Lewis](#), 566 P.2d 678, 680 (Ariz. 1977)(dicta)(Issuance of “all persons” warrant “would authorize a general warrant by which large numbers of persons could be searched without naming them and would be an unreasonable search under the Constitution of the United States”); [State v. Cochran](#), 217 S.E. 2d 181, 183-84 (Ga. Ct. App. 1975)(Holding “a warrant to search designated premises will not authorize the search of every individual who happens to be on the premises,” and that “[w]arrants ‘which sweep so broadly and with so little discrimination are obviously deficient’”)(internal citations omitted).

NOTE: It would be fair to say that, “[t]he more public a place, the less likely a search of all persons will be sustained.” [Guadarrama](#), 128 F. Supp. 2d at 1212. In fact, “‘all persons’ warrants for public places are almost never sustainable under [De Simone](#), because of the ‘substantial likelihood that a person with no connection to criminal wrongdoing might be subjected to search.’” *Id.* [citing [State v. Kinney](#), 698 N.E. 2d 49, 54 (Ohio 1998)]. Nevertheless, the standard set out in [De Simone](#) “does not *automatically* authorize ‘all persons’ warrants for non-public places, especially private residences.” *Id.* at n.14 (emphasis added). This is because “[i]nnocent persons are likely to be present in a residence, even if there is probable cause that the residence also contains evidence of illegal activity.” *Id.* In fact, the Ninth Circuit “has held that ‘all persons’ warrants are never constitutional for ‘a raid on any family home where innocent family members or friends might be residing or visiting.’” *Id.* (citing [Marks](#), 102 F.3d at 1029).

6. The Warrant Need Not Describe the Manner of Execution

“The Fourth Amendment does not set forth some general particularity requirement. It specifies only two matters that must be particularly described in the warrant: ‘the place to be searched’ and ‘the persons or things to be seized.’” [United States v. Grubbs](#), 126 S.Ct. 1494, 1500-1501 (2006). Thus, there is no constitutional requirement that the language in the warrant or its attachments specify the manner in which the warrant is to be executed.

Note, however, that agents seizing computers and storage media should explain in the affidavit why an off-site search of the media will be necessary. Failure to do so may render the warrant overbroad, in that it allows agents to seize and remove voluminous amounts of material that may be outside the scope of the warrant. See [United States v. Hill](#), 459 F.3d 966 (9th Cir. 2006).

7. Under [Rule 41\(c\)](#) of the Federal Rules of Criminal Procedure, Search Warrants Can Authorize the Seizure of Five Different Types of Items. [Rule 41\(c\)](#) provides that “a warrant may be issued for any of the following”:
- Evidence of a crime;
 - Contraband;
 - Fruits of crime, or other items illegally possessed;
 - Property designed for use, intended for use, or used in committing a crime; or
 - A person to be arrested or a person who is unlawfully restrained.

In sum, the Fourth Amendment requires that there be “a nexus - automatically provided in the case of fruits, instrumentalities or contraband - between the item to be seized and criminal behavior.” [Warden v. Hayden](#), 387 U.S. 294, 307 (1967).

8. **False or Misleading Information in the Affidavit.** In [Franks v. Delaware](#), 438 U.S. 154 (1978), “the Supreme Court addressed at length whether a false statement by a government affiant invalidates a search [or arrest] warrant.” [United States v. Hammett](#), 236 F.3d 1054, 1058 (9th Cir.), cert. denied, 534 U.S. 866 (2001). In sum, before a warrant is issued, the Fourth Amendment requires a truthful factual showing in the affidavit used to establish probable cause. See [Franks](#), 438 U.S. at 165-66 (“When the Fourth Amendment demands a factual showing sufficient to compromise ‘probable cause,’ the obvious assumption is that there will be a truthful showing”). As noted by the Supreme Court:

“where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant’s request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit’s false material set to one side, the affidavit’s remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.” [Franks](#), 438 U.S. at 155-156.

See also [United States v. Salter](#), 358 F.3d 1080, 1085 (8th Cir. 2004) (“Police cannot obtain valid search warrants where they knowingly or recklessly provide misinformation to a magistrate who issues a warrant, unless probable cause exists when the affidavit is properly reconstructed with truthful information”); [United States v. Basham](#), 268 F.3d 1199, 1204 (10th Cir. 2001), cert. denied, 535 U.S. 945 (2002) (“It is a violation of the Fourth Amendment for an affiant to knowingly and intentionally, or with reckless disregard for the truth, make a false statement in an affidavit. ... Where a false statement is made in an affidavit for a search warrant, the search warrant must be voided if the affidavit’s remaining content is insufficient to establish probable cause”)(internal citation omitted).

- a. The Requirement for a [Franks](#) Hearing. A defendant who seeks to have evidence suppressed under the rule set out in [Franks](#) must satisfy a two-part test. First, the defendant must show “that the affiant knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant.” [Sherwood v. Mulvihill](#), 113 F.3d 396, 399 (3d Cir. 1997). Second, the defendant must show that the false statements or omissions were “material, or necessary, to the finding of probable cause.” *Id.* “This showing of deliberate or reckless falsehood is ‘not lightly met.’” [United States v. Lucca](#), 377 F.3d 927, 931 (8th Cir. 2004) (citation omitted). A closer examination of this two-part test makes it clear that, in order to obtain a hearing under [Franks](#), a defendant must make a “substantial preliminary showing” of three separate facts. [United States v. Whitley](#), 249 F.3d 614, 620 (7th Cir. 2001). See also [United States v. Rodriguez](#), 367 F.3d 1019, 1025 (8th Cir. 2004), *vacated and remanded for resentencing by Rodriguez v. United States*, 543 U.S. 1101 (2005) (“Conclusory allegations of falsehood are insufficient to make a substantial preliminary showing that a false statement was intentionally or recklessly included in the affidavit”)(citation omitted); [United States v. Merritt](#), 361 F.3d 1005, 1010 (7th Cir. 2004) *vacated and remanded for resentencing by Merritt v. United States*, 543 U.S. 1099 (2005) (noting defendant must make “a substantial preliminary showing, typically in a motion to suppress” of three separate facts).

- 1) **First, the Defendant Must Show the Warrant Affidavit Includes a False Statement or Material Omission.** The first step in any [Franks](#) claim is that the defendant must make a showing that the warrant affidavit has either a false statement in it or that a material omission has occurred.
 - a) **False Statements.** First, the defendant may meet the first step in a [Franks](#) claim by showing that the affidavit includes false information. [Franks](#), 438 U.S. at 155. See also [United States v. Gladney](#), 48 F.3d 309, 313 (8th Cir. 1995)(Noting that, to prevail on a [Franks](#) claim, the defendant must show, *inter alia*, “that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit”)(citation omitted).
 - b) **Material Omissions.** In addition to a false statement in the affidavit, “a material omission of information may also trigger a [Franks](#) hearing.” [United States v. Castillo](#), 287 F.3d 21, 25 (1st Cir. 2002). See also [United States v. Stropes](#), 387 F.3d 766, 771 (8th Cir. 2004)(“Under [Franks](#), if an officer omits critical information from a search warrant application and obtains a warrant, the resultant search may be unreasonable under the Fourth Amendment”); [United States v. Ketzbeck](#), 358 F.3d 987, 990 (8th Cir. 2004)(“Omissions likewise can vitiate a warrant ...”); [United States v. Tomblin](#), 46 F.3d 1369, 1377 (5th Cir. 1995)(“Omissions ... can constitute improper government behavior”) (citation omitted). “By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw. To allow a magistrate to be misled in such a manner could denude the probable cause requirement of all real meaning.” [United States v. Stanert](#), 762 F.2d 775, 781 (9th Cir. 1985).

- 2) **Second, the Defendant Must Show That the False Statement or Material Omission was Made Knowingly and Intentionally or With Reckless Disregard For the Truth.** After showing that a false statement or material omission was made, the defendant must show that the false statement or omission was made "knowingly or with reckless disregard for the truth." [Franks](#), 483 U.S. at 155. See also [Rodriguez](#), 367 F.3d at 1025-26 ("When no proof is offered that an affiant deliberately lied or recklessly disregarded the truth, a [Franks](#) hearing is not required")(citation omitted).
- a) **Knowingly and Intentionally.** "Knowingly and intentionally" requires a separate analysis for assertions and omissions.
- (1) **Assertions.** The Supreme Court does not require that all statements in an affidavit be completely accurate. Instead, the Court simply requires that the statements be "believed or appropriately accepted by the affiant as true." [Franks](#), 438 U.S. at 165. As stated by one court: "The fact that a third party lied to the affiant, who in turn included the lies in a warrant affidavit does not constitute a [Franks](#) violation. A [Franks](#) violation occurs only if the affiant knew the third party was lying, or if the affiant proceeded in reckless disregard of the truth." [United States v. Jones](#), 208 F.3d 603, 607 (7th Cir. 2000). Accordingly, "misstatements resulting from negligence or good faith mistakes will not invalidate an affidavit which on its face establishes probable cause." [Hammett](#), 236 F.3d at 1058 (citation omitted). See also [Franks](#), 438 U.S. at 171 ("Allegations of negligence or innocent mistake are insufficient"); [United States v. Colonna](#), 360 F.3d 1169, 1174 (10th Cir. 2004)("However, a misstatement in an affidavit that is merely the result of simple negligence or inadvertence ... does not invalidate a warrant:"); [United States v. Clapp](#), 46 F.3d 795, 799 (8th Cir. 1995)("Mere negligence or innocent mistake is insufficient to void a warrant") (citation omitted); [United States v. Capozzi](#), 347 F.3d 327, 332 (1st Cir. 2003), *cert. denied*, 540 U.S. 1168, 124 S. Ct. 1187 (2004)("Mere negligence or inattention to detail in preparing an affidavit does not deprive the government of the benefits of the [Leon](#) exception").

- (2) **Omissions.** With regards to omissions, the defendant must show “that the affiant omitted facts with the intent to make ... the affidavit misleading.” [United States v. LaMorie](#), 100 F.3d 547, 555 (8th Cir. 1996). *See also* [Clapp](#), 46 F.3d at 799 (“The defendant must show that the facts were omitted with the intent to make ... the affidavit misleading”); [Gladney](#), 48 F.3d at 313 (same). As with assertions, negligent omissions will not invalidate a warrant. *See, e.g.,* [Ketzeback](#), 358 F.3d at 990 (While “every factual omission is intentional insofar as the omission is made knowingly,” the officer must have omitted the facts “with the intent to mislead or in reckless disregard of the omissions’ misleading effect” to invalidate a warrant); [United States v. McCarty](#), 36 F.3d 1349, 1356 (5th Cir. 1994) (“Negligent omissions will not undermine the affidavit”).

b) **Reckless Disregard for the Truth.** “Reckless disregard for the truth means different things when dealing with omissions and assertions.” [Wilson v. Russo](#), 212 F.3d 781, 787 (3d Cir. 2000).

- (1) **Assertions.** Assertions are made with “reckless disregard for the truth” when “viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.” [Clapp](#), 46 F.3d at 801 n.6.
- (2) **Omissions.** Omissions are made with “reckless disregard for the truth” when a law enforcement officer omits facts that “any reasonable person would have known ... this was the kind of thing the judge would wish to know.” [United States v. Jacobs](#), 986 F.2d 1231, 1235 (8th Cir. 1993). *See also* [Wilson](#), 212 F.3d at 788 (same).

- (3) **Third, the Defendant Must Show That the Allegedly False Statement is Necessary to a Finding of Probable Cause.** Finally, the plaintiff must show that the false statements or omissions were “material” to a finding of probable cause. “Disputed issues are not material if, after crossing out any allegedly false information and supplying any omitted facts, the ‘corrected affidavit’ would have supported a finding of probable cause.” [Velardi v. Walsh](#), 40 F.3d 569, 574 (2d Cir. 1994)(citation omitted). Thus, “even if the defendant makes a showing of deliberate falsity or reckless disregard for the truth by law enforcement officers, he is not entitled to a hearing if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause.” [United States v. Dickey](#), 102 F.3d 157, 161-162 (5th Cir. 1996) (citation omitted). See also [Rodriguez](#), 367 F.3d at 1026 (Noting that, “in order to establish a [Franks](#) violation,” the defendant must “show that the remaining content of the affidavit was insufficient to establish probable cause”)(citation omitted); [United States v. Higgins](#), 995 F.2d 1, 4 (1st Cir. 1993)(“When a defendant offers proof of an omission, ‘the issue is whether, even had the omitted statements been included in the affidavit, there was still probable cause to issue the warrant’”)(citation omitted); [United States v. Froman](#), 355 F.3d 882, 889 (5th Cir. 2004)(“In determining whether probable cause exists without the false statements a court must ‘make a practical, common-sense decision as to whether, given all the circumstances set forth in the affidavit [minus the alleged misstatements], there is a fair probability that contraband or evidence of a crime will be found in a particular place’”)(citation omitted).

- b. **Misrepresentations or Omissions By Someone Other Than the Affiant.** In assessing whether [Franks](#) applies to misrepresentation or omissions by someone other than the affiant, courts look to whether the provider of the information is a private party or a government official.

- 1) **Information Provided By Private Citizens Generally Cannot Be the Basis for a Franks Claim.** “The deliberate falsity or reckless disregard whose impeachment is permitted ... is only that of the affiant, not of any **nongovernmental** informant.” [Franks](#), 438 U.S. at 171 (emphasis added). Thus, when a private informant or citizen provides information that later turns out to be false or misleading, this “does not present grounds to challenge the search warrant so long as the affiant in good faith accurately represents what the informant told him.” [United States v. Wapnick](#), 60 F.3d 948, 956 (2d Cir. 1995), cert. denied, 517 U.S. 1187 (1996), and cert. denied, 518 U.S. 1021 (1996).

- 2) **Information Provided by Other Government Officials Can Be the Basis for a Franks Claim.** As noted above, the general rule is that a false statement made by a private citizen and reasonably relied upon by the affiant cannot form the basis for a [Franks](#) claim. "However, when the informant is himself a government official, a deliberate or reckless omission by the informant can still serve as grounds for a [Franks](#) suppression." [Wapnick](#), 60 F.3d at 956. See also [United States v. DeLeon](#), 979 F.2d 761, 764 (9th Cir. 1992)("The Fourth Amendment places restrictions and qualifications on the actions of the government generally, not merely on affiants"); [Hart v. O'Brien](#), 127 F.3d 424, 448 (5th Cir. 1997), *cert. denied*, 525 U.S. 1103 (1999)(Collecting cases and noting agreement "with the reasoning of these circuit courts that a deliberate or reckless misstatement may form the basis for a [Franks](#) claim against a government official who is not the affiant").. Such a rule ensures that law enforcement personnel cannot "insulate one officer's deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity." [Franks](#), 438 U.S. at 164 n.6.

N. EPO #14: IDENTIFY CIRCUMSTANCES WHEN A TELEPHONIC SEARCH WARRANT SHOULD BE OBTAINED

1. General Rule – Telephonic Search Warrants May Be Obtained Under [Rule 41\(d\)\(3\)](#) of the Federal Rules of Criminal Procedure. A "judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances." [Rule 41\(d\)\(2\)\(B\)](#). In such circumstances, [Rule 41\(d\)\(3\)](#) of the Federal Rules of Criminal Procedure, titled "Requesting a Warrant By Telephonic or Other Means," outlines the rules regarding obtaining telephonic search warrants. Subsection (A) of the rule provides, in pertinent part, that:

"A magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means."
2. The Purpose of [Rule 41\(d\)\(3\)](#) Is to Encourage Law Enforcement Officers to Seek Search Warrants in Situations Where They Otherwise Might Not. The purpose of [Rule 41\(d\)\(3\)](#) was "to encourage Federal law enforcement officers to seek search warrants in situations when they might otherwise conduct warrantless searches." [United States v. McEachin](#), 670 F.2d 1139, 1147 (D.C. Cir. 1981)(citation omitted). See also [United States v. Cuaron](#), 700 F.2d 582, 588 (10th Cir. 1983)("The rule's legislative history demonstrates that Congress intended to encourage police to procure telephone warrants where 'the existence of exigent circumstances is a close question and the police might otherwise conduct a warrantless search'").

- a. **The Time Necessary to Obtain a Search Warrant is Relevant in Determining Whether Exigent Circumstances Existed.** "The time necessary to obtain a warrant is relevant to a determination whether circumstances are exigent." [Cuaron](#), 700 F.2d at 589; [McEachin](#), 670 F.2d at 1146 ("We think courts must also consider the amount of time necessary to obtain a warrant by telephone in determining whether exigent circumstances exist"). Further, "warrants obtained by telephone generally take less time to procure than traditional warrants...." [Cuaron](#), 700 F.2d 589; [United States v. Whitfield](#), 629 F.2d 136, 142 (D.C. Cir. 1980), cert. denied, 449 U.S. 1086 (1981)("With telephonic warrants now permissible ... the delay in [obtaining a warrant] may not be long at all"). Accordingly, "trial courts must consider the availability of a telephone warrant in determining whether exigent circumstances existed, unless the critical nature of the circumstances clearly prevented the effective use of any warrant procedure." [Cuaron](#), 700 F.2d at 589 (citation omitted).
- b. **Failing to Obtain a Telephonic Search Warrant Can Result in the Suppression of Evidence.** "Failing to make a good faith attempt to obtain a telephonic warrant or to present evidence showing that a telephonic warrant was unavailable ordinarily requires suppression." [United States v. Tarazon](#), 989 F.2d 1045, 1050 (9th Cir.), cert. denied, 510 U.S. 853 (1993)(citation omitted). See also [United States v. Alvarez](#), 810 F.2d 879, 883 (9th Cir. 1987)(Where agents had a minimum of 90 minutes, court could not "say conclusively that the agents ... could not have complied with [Rule 41(d)(3)]"); [United States v. Patino](#), 830 F.2d 1413, 1416 (7th Cir. 1987), cert. denied, 490 U.S. 1069 (1989) (Where agent waited 30 minutes for backup to arrive before entering home without a warrant, court noted "a telephonic search warrant should have been sought during the thirty-minute period the agent awaited the other officers"); [United States v. Santa](#), 236 F.3d 662 (11th Cir. 2000) (Police should have attempted to obtain a telephonic warrant where police conducted a controlled buy with nearly three hours' notice, there was no evidence that suspects were aware of surveillance, and no evidence to suggest suspects would destroy the drugs before receiving payment).
3. **Who Can Issue Telephonic Search Warrants?** Unlike traditional Federal search warrants issued pursuant to [Rule 41](#), a state court judge may not issue a telephonic search warrant. See [Rule 41\(d\)\(3\)](#).
4. **There are a Number of Procedural Requirements for Issuance of a Telephonic Search Warrant.** There are a variety of procedural requirements that must be met in order to obtain a telephonic search warrant. It should be remembered that there are actually two warrants involved in a telephonic warrant request: The "original" warrant, completed by the Magistrate Judge, and a "duplicate original warrant," completed by the law enforcement officer involved.
 - a. **First, a "Duplicate" Original Warrant Must Be Prepared.** First, the applicant must prepare a "proposed duplicate original warrant." The duplicate original warrant has to be in writing, although the affidavit does not. See [Rule 41\(e\)\(3\)\(A\)](#).
 - b. **Second, the "Duplicate" Original Warrant Must Be Read Verbatim or Transmitted by Reliable Electronic Means to the Magistrate Judge.** Second, the applicant must "read or otherwise transmit the contents of the document verbatim to the magistrate judge." [Rule 41\(e\)\(3\)\(A\)](#). This means that the requesting officer may, if the option is available, transmit the duplicate original warrant to the magistrate judge by email or facsimile.

- c. **Third, the Magistrate Judge Prepares an "Original" Warrant.** Third, pursuant to [Rule 41\(e\)\(3\)\(B\)](#), "if the applicant reads the contents of the proposed duplicate original warrant, the magistrate judge must enter those contents into an original warrant." Of course, "the magistrate judge may modify the original warrant." In that case, the judge will direct the applicant to modify the proposed duplicate original warrant accordingly. [Rule 41\(e\)\(3\)\(C\)](#).
- If the applicant sends the proposed duplicate original warrant to the judge by reliable electronic means, that transmission may serve as the original warrant. If the judge chooses to modify the warrant, he or she must transmit the modified warrant back to the applicant by reliable electronic means or direct the applicant to modify the proposed duplicate original warrant accordingly. *Id.*
- d. **Fourth, the Magistrate Judge and the Applicant Shall Sign the Warrants.** Fourth, "upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant." [Rule 41\(e\)\(3\)\(D\)](#).
- e. **Finally, the Time of Execution Must Be Entered on the "Duplicate" Original Warrant.** Finally, upon execution of the warrant, "the officer executing the warrant must enter on its face the exact date and time it is executed." [Rule 41\(f\)\(1\)\(A\)](#).
5. **In Situations Involving Telephonic Warrants, There are Recording and Certification Requirements.** In addition to the requirements listed above, the Rule also has recording and certification requirements that must be met.
- a. **The Applicant Must Immediately Be Placed Under Oath or Affirmation.** "Upon learning that an applicant is requesting a warrant, a magistrate judge must... place under oath the applicant and any person on whose testimony the application is based." [Rule 41\(d\)\(3\)\(B\)\(i\)](#); [United States v. Rome](#), 809 F.2d 665, 667 (10th Cir. 1987)("The rule's requirements are clear ... the caller must be under oath from the inception" of the call).
- b. **Judge Must Make a Verbatim Record of the Conversation.** Additionally, pursuant to [Rule 41\(d\)\(3\)\(B\)\(ii\)](#), a magistrate judge must "make a verbatim record of the conversation with a suitable recording device, if available, or by a court reporter, or in writing."
- c. **The Recording of the Conversation Must Be Certified.** Finally, "the magistrate judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the magistrate judge and filed with the clerk." [Rule 41\(d\)\(3\)\(C\)](#). "The purpose of transcribing the taped conversation and certifying the transcription is to give reviewing courts an accurate account of the facts originally presented to the magistrate which resulted in the issuance of a search warrant." [United States v. Loyd](#), 721 F.2d 331, 333 (11th Cir. 1983).

What happens if the warrant is never reduced to a written form? Fed. R. Crim. P. 41(e)(3)(A) requires, among other things, that an investigator who requests a telephonic warrant and the judge who approves it to each create written copies of the authorization for the search. Neither happened in United States v. Cazares-Olivas, 2008 U.S. App. LEXIS 1851 (7th Cir. 2008). The other requirements for telephonic warrants were satisfied, however, where the agent was under oath, and the magistrate judge determined the existence of probable cause and kept a recording of the telephone call. The Seventh Circuit, relying upon the Supreme Court's reasoning in Hudson v. Michigan, (2006), held that depriving the truth-seeking process of the fruit of the searches is not justified by the marginal deterrent value that suppression would have in these circumstances. "Had the magistrate judge written out and signed a warrant after hanging up the phone, everything would have proceeded exactly as it did. The agents would have conducted the same search and found the same evidence." Cazares-Olivas, 2008 U.S. App. LEXIS 1851 at *6. The defendants in this case "received the benefit of a magistrate judge's impartial evaluation before the search occurred," *id.* at *8, which is what the Fourth Amendment requires.

O. EPO #15: IDENTIFY THE LEGAL REQUIREMENTS FOR EXECUTING A SEARCH WARRANT, E.G., AUTHORITY TO EXECUTE; TIME OF ENTRY; METHOD OF ENTRY; LOCATIONS ON A PREMISES WHICH MAY BE SEARCHED; DURATION OF THE SEARCH; AND INVENTORY

1. **Rule 41(d)(2)(A)** of the Federal Rules of Criminal Procedure Dictates Who May Request a Federal Search Warrant. Rule 41(d)(2)(A) of the Federal Rules of Criminal Procedure provides that federal search warrants may be requested by:
 - a. **A Federal Law Enforcement Officer May Request a Federal Search Warrant.** The phrase "federal law enforcement officer" is defined in Rule 41(a)(2)(C) to mean "a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant." Of note, law enforcement officers are required to obtain the concurrence of the United States Attorney's Office before applying for a search warrant. Specifically, 28 CFR § 60.1 provides "that only in the very rare and emergent case is the law enforcement officer permitted to seek a search warrant without the concurrence of the appropriate U.S. Attorney's office."
 - b. **An Attorney for the Government May Request a Federal Search Warrant.** An "attorney for the government" is defined in Rule 1(b)(1), and includes Assistant United States Attorneys.
2. **Who May Execute a Federal Search Warrant?** Rule 41(e)(1) provides that a search warrant must be issued "to an officer authorized to execute it." Who such an officer is must be determined by reference to Title 18 U.S.C. § 3105. This section provides as follows: "A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution." As a general rule, the Supreme Court has held that "it is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant" Dalia v. United States, 441 U.S. 238, 257 (1979). Issues can arise, however, when non-federal law enforcement officers assist in the execution of a federal search warrant.

- a. **State and Local Law Enforcement Officers May Assist in the Execution of Federal Search Warrants.** State and local law enforcement officers are permitted to assist in the execution of search warrants by [§ 3105](#). These officers may be “cross-designated” as federal law enforcement officers, but are not required to be, so long as a federal law enforcement officer is directing the execution of the search warrant. See, e.g., [United States v. Medlin](#), 842 F.2d 1194, 1196 (10th Cir. 1988)(Where “local police officers were acting under federal authority and were subject to federal control when they were present at the search pursuant to the warrant issued to the ATF agents,” the statute “does not require that a person assisting an officer in the execution of a warrant be an officer acting within his or her jurisdiction. Consequently, we find that there was nothing impermissible in Deputy Carter’s presence at the Medlin search”).
- b. **Private Citizens May Assist in the Execution of Federal Search Warrants.** “Federal constitutional law does not proscribe the use of civilians in searches. In fact, Congress has explicitly authorized the practice, and courts have repeatedly upheld the practice.” [Bellville v. Town of Northboro](#), 375 F.3d 23, 32 (1st Cir. 2004). “The use of civilians in the execution of federal search warrants is governed by [\[Title 18 U.S.C. § 3105\]](#).” [United States v. Sparks](#), 265 F.3d 825, 831 (9th Cir. 2001).
- c. **Generally, Three Requirements Must Be Met When a Private Citizen Assists in the Execution of a Federal Search Warrant.** Courts addressing this issue have announced various factors that must be taken into account when private citizens assist in the execution of a federal search warrant. In [Sparks](#), *supra*, the court reviewed the various cases dealing with searches by private citizens and came up with three (3) general principles to apply in determining the validity of a search by a private citizen assisting a law enforcement officer in the execution of a search warrant:
- 1) **First, the Civilian’s Role Must Be to Aid the Efforts of the Police.** In other words, civilians cannot be present simply to further their own goals. [Wilson v. Layne](#), 526 U.S. 603, 613-14 (1999) (Inviting media to “ride along” on execution of warrant violates the defendant’s Fourth Amendment rights); [Bellville](#), 375 F.3d at 33 (Citizen participating in execution of search warrant must “have been serving a legitimate investigative function”); [Buonocore v. Harris](#), 65 F.3d 347, 356 (4th Cir. 1995)(“We have no doubt that the Fourth Amendment prohibits government agents from allowing a search warrant to be used to facilitate a private individual’s independent search of another’s home for items unrelated to those specified in the warrant. Such a search is not ‘reasonable’”); [Bills v. Aseltine](#), 958 F.2d 697, 702 (6th Cir. 1992), cert. denied, 516 U.S. 865 (1995) (suppressing evidence discovered by a security guard who “was present, not in aid of the officers or their mission, but for his own purposes involving the recovery of ... property not mentioned in any warrant”). As one court has noted: “To conclude otherwise would authorize law enforcement officers to invite private individuals to engage in conduct that would constitute trespass were it not conducted under the guise of a search warrant.” [Buonocore](#), 65 F.3d at 359.

- 2) **Second, the Officer Must Be in Need of Assistance.** “Police cannot invite civilians to perform searches on a whim; there must be some reason why a law enforcement officer cannot himself conduct the search and some reason to believe that postponing the search until an officer is available might raise a safety risk.” [Sparks](#), 265 F.3d at 832. See also [Bellville](#), 375 F.3d at 33 (“Also, the officers must have some demonstrable need for the presence of the civilian”).
 - 3) **Third, the Civilians Must Be Limited to Doing What the Police Had Authority to Do.** [Coolidge v. New Hampshire](#), 403 U.S. 443, 487 (1971); [United States v. Cleaveland](#), 38 F.3d 1092, 1093 (9th Cir. 1995).
- d. **Private Citizen Examples.** The following cases provide examples of when a private citizen may assist a law enforcement officer in the execution of a search warrant under [§ 3105](#):
- 1) [United States v. Robertson](#), 21 F.3d 1030, 1034 (10th Cir.), cert. denied, 513 U.S. 891 (1994)(Carjacking victim's presence in defendant's residence was permitted to help identify items covered by warrant);
 - 2) [United States v. Schwimmer](#), 692 F. Supp. 119, 124, 126-27 (E.D.N.Y. 1988)(Holding that government agents lawfully had computer expert help identify items that could be seized under warrant);
 - 3) [United States v. Clouston](#), 623 F.2d 485, 486-87 (6th Cir. 1980)(per curiam)(Holding that government agents properly seized telephone company property identified by assisting telephone company agents, even though warrant did not list telephone company property).
3. **Rule 41(e)(2)(A) and (B)** Provide the Requirements For When a Federal Search Warrant May Be Served. The timeframes in which a search warrant must be served are outlined in [Rule 41\(e\)\(2\)\(A\) and \(B\)](#) of the Federal Rules of Criminal Procedures.
- a. **Federal Search Warrants Must Generally Be Served in the “Daytime.”** [Rule 41\(e\)\(2\)\(B\)](#) provides that a search warrant “must command the officer to execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time.”
- 1) **“Daytime” Defined.** Pursuant to [Rule 41\(a\)\(2\)\(B\)](#), “the term ‘daytime’ means ‘the hours between 6:00 a.m. and 10:00 p.m. according to local time.’”
 - 2) **Search Warrants Involving Controlled Substances May Be Served Anytime.** [Title 21 U.S.C. § 879](#) provides that “a search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States Magistrate Judge issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.” Further, the Supreme Court has held that such cases “require no special showing for a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched at that time.” [Gooding v. United States](#), 416 U.S. 430, 458 (1974).

- 3) **Nighttime Service of Search Warrants is Permitted If Reasonable Cause is Shown.** “Nighttime execution of a search warrant is permissible under [\[Rule 41\(e\)\(2\)\(B\)\]](#) ... if nighttime execution is specifically provided for in the warrant and is supported by ‘reasonable cause.’” [United States v. Smith](#), 1991 U.S. App. LEXIS 19748 (6th Cir. 1991) (unpublished). “The federal rule requires explicit authorization for a night search, and ‘reasonable cause shown’ to the issuing magistrate justifying the unusual intrusion of a search at night.” [United States v. Searp](#), 586 F.2d 1117, 1121 (6th Cir. 1978). “The rule recognizes that there are times when a night search is necessary; if, for instance, execution would be impossible in the daytime or the property sought is likely to be destroyed or removed before daylight.” *Id.* Finally, “[t]he rule requires only some factual basis for a prudent conclusion that the greater intrusiveness of a nighttime search is justified by the exigencies of the situation.” *Id.* In determining whether a warrant may be executed in the nighttime, courts consider factors similar to those examined when determining the legality of a “no-knock” entry, including:

- a) Danger or Futility;
- b) Inhibition of Effective Crime Investigation; and
- c) Destruction of Evidence.

See, e.g., Colonna, 360 F.3d at 1176 (Nighttime execution of warrant upheld where suspect had prior extensive involvement with law enforcement; concerned citizen expressed fear that suspect would retaliate violently; and children lived in the vicinity of the residence); [United States v. Tucker](#), 313 F.3d 1259, 1265 (10th Cir. 2002)(Noting “the danger of destruction or removal of the evidence is sufficient reason for nighttime execution of a search warrant, in part because such circumstances could even constitute exigent circumstances for a search without a warrant”); [United States v. Stefanson](#), 648 F.2d 1231, 1236 (9th Cir. 1981)(Noting that, “when a search warrant is sought similar exigent circumstances justify an immediate nighttime execution of it”)

- b. **Rule 41(e)(2)(A)** Provides That a Federal Search Warrant Must Be Served Within *** 14 Days of Issuance, Unless a Specific Period of Time is Noted in the Warrant.
*** Effective 1 December 2009, [Rule 41\(e\)\(2\)\(A\)](#) provides that a search warrant must be served within one of two possible periods of time.

- 1) **Service May Be Required Within a Specified Time.** First, the rule provides for service “within a specified time.” Thus, the search warrant itself may specify when service is required. *See, e.g., United States v. Gerber*, 994 F.2d 1556 (11th Cir. 1993)(Search warrant obtained on September 12 was drafted to expire on September 13).
- 2) **Federal Search Warrants Must Be Served Within Fourteen [14] Days of Issuance.** If no specified time period for the search is contained in the warrant itself, the warrant must be served within a period “no longer than 14 days” from the date of issuance.

- 3) **Tracking Warrants.** Tracking warrants that authorize installation of a tracking device “must command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 calendar days” from the date the warrant was issued. Installation must be performed in the daytime, “unless the judge for good cause expressly authorizes installation at another time.” Rule 41(e)(2)(B)(i)-(ii).
 - 4) **Violations of Rule 41(e)(2)(A) or (B) Generally Do Not Result in Suppression of Evidence.** If a violation of this portion of Rule 41 occurs, it will not automatically result in suppression of any evidence obtained during the execution of the search warrant. “Completing a search shortly after the expiration of a search warrant does not rise to the level of a constitutional violation and cannot be the basis for suppressing evidence seized so long as probable cause continues to exist, and the government does not act in bad faith.” [Gerber](#), 994 F.2d 1560.
4. **Locations On a Premises That May Be Searched.** In [United States v. Ross](#), 456 U.S. 798, 820-821 (1982), the Supreme Court discussed the scope of a search conducted pursuant to a premises search warrant:
- “A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, the warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found.” [Id.](#)
- See also [United States v. Evans](#), 92 F.3d 540, 543 (7th Cir.), cert. denied, 519 U.S. 1020 (1996)(“A warrant to search a house or other building authorizes the police to search any closet, container, or other closed compartment in the building that is large enough to contain the contraband or evidence that they are looking for If they are looking for a canary’s corpse, they can search a cupboard, but not a locket. If they are looking for an adolescent hippopotamus, they can search the living room or garage but not the microwave oven. If they are searching for cocaine, they can search a container large enough to hold a gram, or perhaps less”)(citation omitted); [United States v. Nichols](#), 344 F.3d 793, 798 (8th Cir. 2003)(“A lawful search extends to all areas and containers in which the object of the search may be found”)(citations omitted).

NOTE: In the following sections, the rules regarding where a law enforcement officer may search are discussed. In addressing these issues with the students, it should be noted that, “[w]hile the purposes justifying a police search strictly limit the permissible extent of the search, the [Supreme] Court has also recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants.” [Maryland v. Garrison](#), 480 U.S. 79, 87 (1987). See also [Brinegar v. United States](#), 338 U.S. 160, 176 (1949) (“Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability”); [Peterson v. Jensen](#), 371 F.3d 1199, 1203 (10th Cir. 2004) (Same).

- a. **Premises, Outbuildings, Curtilage.** “A search warrant for a residence may include all other buildings and other objects within the curtilage of that residence, even if not specifically referenced in the search warrant.” [United States v. Cannon](#), 264 F.3d 875, 881 (9th Cir. 2001), cert. denied, 534 U.S. 1143 (2002). *See also* [United States v. Earls](#), 42 F.3d 1321, 1327 (10th Cir. 1994), cert. denied, 514 U.S. 1085 (1995)(“The warrant authorizing the search of the premises including the residence on that particular premises permitted the search of the outbuildings within the curtilage of the residence”); [United States v. Bonner](#), 808 F.2d 864, 868 (1st Cir. 1986), cert. denied, 481 U.S. 1006 (1987)(Holding that “warrants authorizing a search of ‘premises’ at a certain address authorize a search of the buildings standing on that land”).
- b. **Generally, Vehicles on the Property to Be Searched May Be Searched Pursuant to a Premises Search Warrant.** “A warrant to search a house or other building authorizes the police to search any closet, container, or other closed compartment in the building that is large enough to contain the contraband or evidence that they are looking for.” [United States v. Percival](#), 756 F.2d 600, 612 (7th Cir. 1985). In this regard, “a car parked in a garage is just another interior container, like a closet or a desk.” [Evans](#), 92 F.3d at 543. Thus, “if ... the trunk or glove compartment is not too small to hold what the search warrant authorizes the police to look for, they can search the trunk and the glove compartment.” *Id.* In these types of cases, two issues generally arise: First, must the vehicle be located on the curtilage of the home? And second, does this apply to vehicles owned by visitors to the home?
 - 1) **The Vehicle Must Be Located on the Curtilage to Fall Under the Authority of the Search Warrant.** To fall under the authority of a search warrant, the vehicle must be parked on the curtilage of the home where the warrant is being served. *See* [United States v. Sturmoski](#), 971 F.2d 452, 458 (10th Cir. 1992)(“A search warrant authorizing a search of a certain premises generally includes any vehicles located ***within its curtilage*** if the objects of the search might be located’ in those vehicles”)(emphasis added) (citation omitted); [United States v. Griffin](#), 827 F.2d 1108, 1114 (7th Cir. 1987), cert. denied, 485 U.S. 909 (1988); [United States v. Asselin](#), 775 F.2d 445, 447 (1st Cir. 1985); [United States v. Bulgatz](#), 693 F.2d 728, 730 n.3 (8th Cir. 1982), cert. denied, 459 U.S. 1210 (1983); [United States v. Napoli](#), 530 F.2d 1198, 1200-01 (5th Cir.), cert. denied, 429 U.S. 920 (1976).

- 2) **Ownership of the Vehicle May Also Play a Role in Determining Whether the Vehicle Falls Under the Authority of the Search Warrant.** In [United States v. Percival](#), 756 F.2d 600 (7th Cir. 1985), the Seventh Circuit Court of Appeals held that "a search warrant authorizing a search of particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises." *Id.* at 612. However, in a later case, the court reinterpreted its decision in [Percival](#), holding that whether or not a vehicle on the curtilage may be searched pursuant to a premises warrant "is not tied to ownership." [Evans](#), 92 F.3d at 543. See also [United States v. Cole](#), 628 F.2d 897, 899-900 (5th Cir. 1980), cert. denied, 450 U.S. 1043 (1981) (Truck of a third party who arrived during the execution of a search warrant was validly searched pursuant to the warrant). Taking a somewhat more restrictive view, the Tenth Circuit Court of Appeals In [United States v. Gottschalk](#), 915 F.2d 1459 (10th Cir. 1990), held "the scope of the warrant [includes] those automobiles either actually owned or under the control and dominion of the premises owner or, alternatively, those vehicles which appear, based on objectively reasonable indicia present at the time of the search, to be so controlled. Thus where the officers act reasonably in assuming that the automobile is under the control of the premises owner, it is included in the warrant." *Id.* at 1461. See also [United States v. Duque](#), 62 F.3d 1146, 1151 (9th Cir. 1995), cert. denied, 519 U.S. 819 (1996) ("A search warrant authorizing a search of a particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises").

- c. **Generally, Containers on the Property to Be Searched May Be Searched Pursuant to a Premises Search Warrant.** "As a general proposition, any container situated within residential premises which are the subject of a validly-issued warrant may be searched if it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant." [United States v. Gray](#), 814 F.2d 49, 51 (1st Cir. 1987) (citations omitted). However, "special concerns arise when the items to be searched belong to visitors, and not occupants, of the premises." [United States v. Giwa](#), 831 F.2d 538, 544 (5th Cir. 1987) (citations omitted). In such situations, "a search of personal effects, such as briefcases, pocketbooks, portfolios, etc. 'does not clearly fall either within the realm of a personal search or a search of the premises.'" [Premises Known & Described as 55 West 47th Street, Suites 620 & 650 v. United States](#), 712 F. Supp. 437, 442 n.8 (S.D.N.Y. 1989) (citation omitted). In analyzing whether a visitor's container may be searched pursuant to a premises search warrant, the circuit courts have taken two different approaches. One approach focuses on the relationship between the visitor and the premises being searched, while the other focuses on the physical possession or location of the item in question.

- 1) **Some Courts Look to the Relationship Between the Visitor and the Place Searched to Determine if the Container Falls Under the Authority of the Warrant.** Various courts have addressed the search of a visitor's container "by focusing primarily on the relationship between the person whose personal effects are searched and the place which is the subject of the search." [Giwa](#), 831 F.2d at 544. See also [United States v. Micheli](#), 487 F.2d 429, 431 (1st Cir. 1973)("In determining to what extent a recognizable personal effect not currently worn, but apparently temporarily put down, such as a briefcase, falls outside the scope of a warrant to search the premises, we would be better advised to examine the relationship between the person and the place"). Under this approach, the stronger the relationship between a visitor and the premises being searched, the more likely a search of the visitor's personal possessions would be permitted under the auspices of the warrant. See, e.g., [Gray](#) 814 F.2d at 51 (Search of defendant's jacket valid under the search warrant because "the defendant was not ... a casual afternoon visitor to the premises," but instead was "discovered in a private residence, outside of which a drug deal had just 'gone down,' at the unusual hour of 3:45 a.m."); [Micheli](#), 487 F.2d at 432 (Search of defendant's briefcase valid under the search warrant where defendant was not simply "a mere visitor or passerby who suddenly found his belongings vulnerable to a search of the premises," but instead "had a special relationship to the place, which meant that it could reasonably be expected that some of his personal belongings would be there"); [Giwa](#), 831 F.2d at 545 (Search of defendant's flight bag valid under the search warrant where defendant was not a "mere visitor" or "passerby," but instead was an "overnight visitor" to the apartment and appeared to be "more than just a temporary presence in the apartment"); [Hummel-Jones v. Strope](#), 25 F.3d 647, 651-52 (8th Cir. 1994)(In finding search of visitor's bag unlawful, court noted that "[p]resence, standing alone, is not enough of a relationship to justify searching a visitor's bag"); [United States v. Branch](#), 545 F.2d 177, 182 (D.C. Cir. 1976)(Search of defendant's bag pursuant to search warrant found invalid where, *inter alia*, "he was apparently a mere visitor; his relationship to the premises was not known, but was at best the subject of speculation").

- 2) **Other Courts Look to the Physical Possession or Proximity of the Container to Decide Whether a Search is Permitted Pursuant to the Warrant.** Other courts analyze the search of a visitor's container by looking to whether the item is in the physical possession of the visitor at the time of the search. If the item is in the physical possession of the visitor, then the bag becomes an extension of the person and is clearly outside the scope of a premises search warrant. Alternatively, if the item is not in the physical possession of the visitor, then it falls outside the scope of a "personal" search and may be searched pursuant to the warrant. See [Micheli](#), 487 F.2d at 431 ("A search of clothing currently worn is plainly within the ambit of a personal search and outside the scope of a warrant to search the premises"); [Branch](#), 545 F.2d at 182 (Search of defendant's bag pursuant to search warrant found invalid where, *inter alia*, "the bag in dispute was suspended from his shoulder"). [United States v. Teller](#), 397 F.2d 494, 497 (7th Cir.), cert. denied, 393 U.S. 937 (1968) (In upholding search of defendant's purse pursuant to search warrant, court held "it would be contrary to the facts to hold that a search of a purse lying upon a bed, where it was placed by its owner, constitutes a search of the person of that owner who had placed it there and left the room") (emphasis in original); [United States v. Johnson](#), 475 F.2d 977, 979 (D.C. Cir. 1973) (Search of defendant's purse was valid under search warrant because "it was not being 'worn' by [the defendant] and thus did not constitute an extension of her person so as to make the search one of her person") (emphasis in original).
5. **Generally, There is No Requirement to Present the Warrant Prior to Beginning the Search.** "Law enforcement officers are not constitutionally required to present a copy of the search warrant prior to commencing a search, so long as the previously issued warrant is presented before the officers vacate the premises." [United States v. Hepperle](#), 810 F.2d 836, 839 (8th Cir. 1987). See also [Frisby v. United States](#), 79 F.3d 29, 32 (6th Cir. 1996) ("The Fourth Amendment does not necessarily require that government agents serve a warrant, or an attachment thereto, prior to initiating a search or seizing property"); [United States v. Bonner](#), 808 F.2d 864 (1st Cir. 1986), cert. denied, 481 U.S. 1006 (1987). However, the Ninth Circuit Court of Appeals has enunciated a different standard. See [United States v. Gantt](#), 194 F.3d 987, 1003 (9th Cir. 1999) (holding "if [Rule 41\(d\)](#) does not 'invariably' require service before the search, then [Rule 41\(d\)](#) must usually require service before the search").
6. **A Law Enforcement Officer May Answer a Ringing Telephone During the Execution of a Search Warrant.** A law enforcement officer may answer a ringing telephone without violating the Fourth Amendment if he is lawfully on the premises executing a search warrant. As noted by one court: "An agent's conduct in answering a telephone while lawfully on the premises is not violative of the Fourth Amendment." [United States v. Passarella](#), 788 F.2d 377, 380 (6th Cir. 1986). Accordingly, "where the officers were lawfully upon the premises and answered the telephone, any incriminating evidence acquired from those telephone calls is not subject to suppression on grounds of constitutionally protected privacy concerns." *Id.* at 382. See [United States v. Vadino](#), 680 F.2d 1329 (11th Cir. 1982); [United States v. Gallo](#), 659 F.2d 110 (9th Cir. 1981); [United States v. Campagnuolo](#), 592 F.2d 852 (5th Cir. 1979); [United States v. Fuller](#), 441 F.2d 755 (4th Cir.), cert. denied, 404 U.S. 830 (1971).

7. **A Law Enforcement Officer May Temporarily Seize Handguns Found During the Execution of a Search Warrant.** When, during the execution of a search warrant, a handgun is found that is not obviously contraband, the handgun may be temporarily seized for safety reasons. See, e.g., [United States v. Bishop](#), 338 F.3d 623, 628 (6th Cir. 2003), cert. denied, 540 U.S. 1206, 124 S. Ct. 1479 (2004) (“We hold that a police officer who discovers a weapon in plain view may at least temporarily seize that weapon if a reasonable officer would believe, based on specific and articulable facts, that the weapon poses an immediate threat to officer or public safety”); [United States v. Malachese](#), 597 F.2d 1232, 1234 (8th Cir. 1979), cert. denied, 444 U.S. 902 (1979) (“Although the incriminating nature of the handgun may not have been immediately apparent to the investigating officers, its temporary seizure, unloading, and retention by a responsible officer ... seem[ed] a reasonable precaution to assure the safety of all persons on the premises during the search”); [United States v. Miles](#), 82 F. Supp. 2d 1201, 1209 (D. Kan. 1999), aff’d, 2001 U.S. App. LEXIS 16160 (10th Cir. 2001) (“Once inside the apartment, either pursuant to a consensual search or the valid execution of an arrest warrant, the officers were free to seize, at least momentarily for their safety and the safety of others in the area, the firearm which was in plain view”); [United States v. Pillow](#), 842 F.2d 1001, 1004 (8th Cir. 1988) (Temporary seizure of weapon reasonable where “the gun was in plain view and subject to seizure as a reasonable safety precaution”); [United States v. Timpani](#), 665 F.2d 1, 5 (1st Cir. 1981) (Removal of weapons to vehicle while search warrant was obtained was reasonable). ++ [U.S. v. Roberts](#), 2010 U.S. App. LEXIS 14359, (5th Cir. 2010) (Temporary detention of firearms found during a lawful protective sweep is permitted. The 5th Circuit reasoned: “The officers were entitled to maintain control over the weapons while they completed their investigation of the individuals inside the apartment. During that investigation the officers discovered that the defendant was an unlawful user of a controlled substance and that another occupant of the apartment was a convicted felon. At this time the illegality of the firearms became apparent and their permanent seizure was warranted.”)
8. **A Suspect Ordinarily Has No Right to Have an Attorney Present During the Execution of a Search Warrant.** A suspect does not ordinarily have a right to have an attorney present during the execution of a search warrant. See [United States v. Timpani](#), 665 F.2d 1, 3 (1st Cir. 1981). However, in certain circumstances, such as when the suspect is arrested or “judicial proceedings” have been initiated, a Fifth or Sixth Amendment right to counsel might accrue. *Id.* (citation omitted).
9. **A Law Enforcement Officer May Use a Reasonable Amount of Force When Executing a Search Warrant.** “Case law has indicated that at least in certain circumstances officers lawfully may handcuff the occupants of the premises while executing a search warrant.” [Torres v. United States](#), 200 F.3d 179, 185 (3d Cir. 1999). “On the other hand, handcuffing may be excessive in certain circumstances.” *Id.* Whether the force used was reasonable is determined by looking at the “totality of the circumstances.” Among the factors considered by the courts in making this determination are:
- a. The Severity of the Crime, *Graham*, 490 U.S. at 396;
 - b. Whether the Suspect Poses An Immediate Threat to the Safety of the Officers or Others, *Id.*;
 - c. Whether the Suspect is Actively Resisting Arrest or Attempting to Evade Arrest By Flight, *Id.*;

- d. How Many Individuals the Officers Confronted, *Mellott v. Heemer*, 161 F.3d 117, 122 (3d Cir. 1998), cert. denied, 526 U.S. 1160 (1999);
 - e. Whether the Physical Force Applied Was of Such An Extent As to Lead to Injury, *Id.*;
 - f. Whether the Suspect Was Elderly, a Child, or Suffering From Illness or Medical Disability, *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994) (“Detentions, particularly lengthy detentions, of the elderly, or of children, or of individuals suffering from a serious illness or disability raise additional concerns”).
10. **Destruction of Property During a Search is Not Necessarily a Violation of the Fourth Amendment.** As a general rule, “any destruction of property that is not reasonably necessary to the performance of the law enforcement officer’s duties constitutes an unreasonable seizure under the Fourth Amendment.”. [Destruction of Property as Violation of Fourth Amendment](#), 98 A.L.R.5th 305 (2002). Suffice it to say, when law enforcement officers execute search warrants, they must occasionally damage property in order to conduct a complete and thorough search. Accordingly, “the destruction of property during a search does not necessarily violate the Fourth Amendment.”. *Id.* Instead, “only unnecessarily destructive behavior, beyond that necessary to execute a warrant effectively, violates the Fourth Amendment.” [Liston v. County of Riverside](#), 120 F.3d 965, 979 (9th Cir. 1997).
11. **Rule 41(f)(1)(B) Requires That Law Enforcement Officers Prepare an Inventory of Any Property Seized.** “An officer present during the execution of the warrant must prepare and verify an inventory of any property seized.” [Rule 41\(f\)\(2\)](#).
- a. **Inventory Must Be Prepared In the Presence of Another Officer or the Person Whose Property is Being Seized.** The officer who prepares the inventory “must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken.” [Rule 41\(f\)\(2\)](#).
 - b. **If Neither Present, Inventory Must Be Prepared in the Presence of One Other Credible Person.** If neither another officer or the person whose property is being seized “is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.” [Rule 41\(f\)\(1\)\(B\)](#).
12. **Rule 41(f)(1)(C) Requires That Law Enforcement Officers Provide a Copy of the Warrant and the Receipt (Inventory).** [Rule 41\(f\)\(1\)\(C\)](#) provides, in pertinent part, that “the officer executing the warrant must:
- a. Give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or
 - b. Leave a copy of the warrant and receipt at the place where the officer took the property.”

13. **“Ministerial” Violations of Rule 41(f)(1)(C) Do Not Require Suppression of the Evidence.** “Courts have frequently held ... that not all violations of [Rule 41(f)(1)(C), formerly [Rule 41\(f\)\(3\)](#),] render a search invalid. ‘Ministerial’ violations of [the Rule]... require suppression of evidence only if the defendant can demonstrate that he was prejudiced by the violation.” [United States v. Wyder](#), 674 F.2d 224, 226 (4th Cir.), cert. denied, 457 U.S. 1125 (1982). Examples of “ministerial” violations include a claim that the government had not returned the warrant to the magistrate judge within the prescribed time period, [United States v. Smith](#), 914 F.2d 565, 568 (4th Cir. 1990), cert. denied, 498 U.S. 1101 (1991), and a “scrivenor’s” error contained in the copy of the search warrant provided to the defendant, [Wyder](#), 674 F.2d at 225-226.
14. **Suppression is Required Where Actual Prejudice Occurs or There is Intentional Disregard of the Rule.** While “ministerial” violations of [[Rule 41\(f\)\(1\)\(C\)](#)] will not result in the suppression of evidence, this sanction is appropriate in circumstances where a constitutional violation has occurred. “[U]nless a clear constitutional violation occurs, noncompliance with [Rule 41](#) requires suppression of evidence only where, (1) there was ‘prejudice’ in the sense that the search might not have occurred or would not have been so abrasive if the rule had been followed, or (2) there is evidence of intentional and deliberate disregard of a provision in the Rule.” [United States v. Chaar](#), 137 F.3d 359, 362 (6th Cir. 1998)(citation omitted). See also [Frisby](#), 79 F.3d at 32 (“Although the procedural steps enumerated in [Rule 41(f)(1)(C)] are important and should not be disregarded, they are ministerial and ‘absent a showing of prejudice, irregularities in these procedures do not void an otherwise valid search’”(citation omitted); [Nichols](#), 344 F.3d at 799 (“Where executing officers fail to abide by the dictates of [Rule 41](#), suppression is only required if a defendant can demonstrate prejudice”).
15. **Rule 41(f)(1)(D) Also Requires the Warrant to be Returned to the Issuing Magistrate.** Following the issuance and execution of a search warrant, [Rule 41\(f\)\(1\)\(D\)](#) requires that “the officer executing the warrant must promptly return it - together with a copy of the inventory - to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.” See also [Rule 41\(e\)\(2\)](#)(Providing the warrant must “designate the magistrate judge to whom it must be returned”). [Rule 41\(f\)\(3\)](#) states, however, that “[u]pon the government’s request, a magistrate judge – or if authorized by [Rule 41\(b\)](#), a judge of a state court of record – may delay any notice required by this rule if the delay is authorized by statute.” Examples of statutes that permit delayed notice are [Rule 41\(f\)\(2\)\(C\)](#) (warrants for electronic tracking devices), and 18 U.S.C. §3103a(b) (“sneak and peek “ or “covert entry” warrants).

P. EPO #16: IDENTIFY THE SCOPE AND PURPOSE OF A PROTECTIVE SWEEP

1. **General Rule – Protective Sweeps are Permitted Where a Law Enforcement Officer has Reasonable Suspicion to Believe the Residence Harbors a Third Party Who Could Pose a Danger to the Officer.** Prior to the Supreme Court’s decision in [Chimel v. California](#), 395 U.S. 752 (1969), law enforcement officers were permitted to search the entire premises where an arrest occurred as an incident of that arrest.. [Harris v. United States](#), 331 U.S. 145 (1947). However, [Chimel](#) restricted the scope of a search incident to arrest in a dwelling to the arrestee’s person and the area “within his immediate control.” [Chimel](#), 395 U.S. at 763. Two decades later, in [Maryland v. Buie](#), 494 U.S. 325 (1990), the Supreme Court expanded the scope of a search incident to arrest in a dwelling and introduced what have become known as “protective sweeps.”

2. **"Protective Sweeps" Defined.** A "protective sweep" is a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." [Buie](#), 494 U.S. at 327.
3. **Several Circuit Courts Do NOT Require An Arrest For a Protective Sweep To Be Valid.** Several federal courts have found that there is no "across-the-board, hard and fast *per se* rule that a protective sweep can be valid only if conducted incident to an arrest." [United States v. Gould](#), 364 F.3d 578, 581 (5th Cir. 2004)(emphasis in original). These courts have recognized "in the in-home context it appears clear that even without an arrest other circumstances can give rise to equally reasonable suspicion of equally serious risk of danger of officers being ambushed by a hidden person as would be the case were there an arrest." [Id.](#) at 584. See, e.g., [United States v. Taylor](#), 248 F.3d 506, 513 (6th Cir.), *cert. denied*, 534 U.S. 981 (2001)(Where government argued nothing in [Buie](#) decision indicated that an arrest is a mandatory prerequisite for conducting a protective sweep of the area, and that [Buie](#) was based on investigative stop cases, court found these arguments persuasive); [United States v. Garcia](#), 997 F.2d 1273, 1282 (9th Cir. 1993)(Court upheld a protective sweep in a consent entry case where no arrest was made until after the sweep discovered guns in plain view); [United States v. Patrick](#), 959 F.2d 991, 996-997 (D.C. Cir. 1992)(Where officers had consent to enter apartment, they "were lawfully on the premises" and thus "were authorized to conduct a protective sweep based on their reasonable belief that one of its inhabitants was trafficking in narcotics." According to the court: "We think the holding in [Buie](#), notwithstanding the search there was conducted pursuant to a warrant and not consent, supports the police search here"); [United States v. Koubriti](#), 199 F. Supp. 2d 656, 662 (D. Mich. 2002)("While the Court acknowledges that some circuits appear to take this restrictive view of the holding in [Buie](#)... the Sixth Circuit has expressly rejected such a narrow construction"). *But see* [United States v. Davis](#), 290 F.3d 1239, n.4 1242 (10th Cir. 2002)(In finding protective sweep impermissible because there was no arrest, court quoted the first sentence of [Buie](#); court also found sweep objectionable apparently because it was not narrowly confined to a cursory visual inspection of places where a person might be hiding, as required by [Buie](#)).
4. **There are Two Different Kinds of Protective Sweeps.** The Supreme Court has identified two types of protective sweeps. The first, which requires no articulable suspicion, involves looking in people-sized places immediately adjoining the place of arrest. The second, which requires articulable suspicion, allows a greater intrusion into the premises. [Maryland v. Buie](#), 494 U.S. 325 (1990); *see also* [United States v. Ford](#), 56 F.3d 265, 268-69 (D.C. Cir. 1995) (Noting the Supreme Court has "identified two situations in which protective sweeps are justified, and two types of protective sweeps," with the "first involv[ing] 'looking in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched,' and the second going 'beyond that'");
 - a. Three Requirements to Conduct an "Automatic" Protective Sweep.
 - 1) **First, the Officer May Only Look in Places Immediately Adjoining the Place of Arrest.** In [Maryland v. Buie](#), 494 U.S. 325 (1990), the Supreme Court held that once an arrestee is located and the arrest is made, "as a precautionary matter and without probable cause or reasonable suspicion, [officers may] look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched."

- 2) **Second, the Officer May Only Look in Places Where Persons Could Be Located.** It should be remembered that a “protective sweep” is not a full search of a dwelling. “Rather, such a search may only encompass those spaces where an individual might be found.” [United States v. Blue](#), 78 F.3d 56, 61 (2d Cir. 1996)(Search of mattress springs did not fall within the scope of protective sweep because “the nature and scope of the intrusion could not be justified by a reasonable, articulable suspicion that the mattress concealed a dangerous person”). See also [Ford](#), 56 F.3d at 270 (Search under mattress and behind window shades outside the scope of a permissible protective sweep because persons could not reasonably hide under mattress or behind window shades); [United States v. Lauter](#), 57 F.3d 212, 216-17 (2d Cir. 1995)(Officer “was justified in looking in the space between the bed and the wall, as a person certainly could have been hiding in that location”); [United States v. Tucker](#), 1999 U.S. App. LEXIS 1480 (10th Cir. 1999) (unpublished) (During protective sweep, officers “are entitled to look in a closet or open a bathroom door or look behind a bulky piece of furniture”).

3) **Third, the Protective Sweep May Last No Longer Than is Necessary to Dispel the Danger.** In [Buie](#), the Court ruled that a protective sweep may “last no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” [Buie](#), 494 U.S. at 336. Although there is no bright-line rule on how long a protective sweep may last, it is important to remember that they are generally measured in terms of minutes, rather than hours. Thus, the longer it takes to complete a protective sweep, the more likely a court would find the sweep excessive. See, e.g., [United States v. Richards](#), 937 F.2d 1287, 1292 (7th Cir. 1991)(In upholding protective sweep, court stated: “[The officer] did not search through drawers or dawdle in each room looking for clues. He moved briefly through two bedrooms, the bathroom and kitchen. When satisfied that the apartment was secure he returned to the living room and called for assistance. The Court in [Buie](#) requires no more”); [United States v. Burrows](#), 48 F.3d 1011, 1017 (7th Cir.), cert. denied, 515 U.S. 1168 (1995)(Protective sweep upheld where “the search of ... four bedrooms and a linen closet, which required the officers to force four locked doors, took no more than five minutes, an interval compatible with the officers' legitimate purpose”); [United States v. Hromada](#), 49 F.3d 685, 690 (11th Cir. 1995) (Protective sweep upheld where “the SRT opened doors only to areas large enough to harbor a person. There is no evidence that the officers opened drawers or that the sweep of the house was overextensive. In fact, the sweep was short; it lasted only about a minute”); [United States v. Smith](#), 131 F.3d 1392, 1396 (10th Cir. 1997), cert. denied, 522 U.S. 1141 (1998)(Protective sweep upheld where it was properly limited in scope and “its duration was between thirty and forty seconds, well within the time it took to arrest Mr. Snider and depart”). But see, e.g., [Hogan](#), 38 F.3d at 1150 (Court found a two-hour protective sweep impermissible because it appeared to be “a fishing expedition for evidence” and because it “greatly exceeded the permissible scope of a protective sweep”); [United States v. Noushfar](#), 140 F.3d 1244, 1245 (9th Cir. 1996)(Protective sweep “exceeded the limits of a [Buie](#) sweep in both time and scope” where Customs agents “went through the apartment for more than a half-hour”); [United States v. Akrawi](#), 920 F.2d 418, 420-421 (6th Cir. 1990)(Protective sweep found impermissible because, *inter alia*, it lasted forty-five minutes).

b. **Additional Requirement to Conduct an “Extended” Protective Sweep.** In order to conduct an extended protective sweep, an extra requirement must be satisfied.

- 1) **Reasonable Suspicion that Other Dangerous Persons are Present.** To search beyond the area immediately adjoining the place of arrest, a law enforcement officer must have reasonable suspicion “that the area to be swept harbors an individual posing a danger to those on the arrest scene.” [Buie](#), 494 U.S. at 334. “The officer’s belief must be based on specific and articulable facts.” [United States v. Cunningham](#), 133 F.3d 1070, 1073 (8th Cir.), *cert. denied*, 523 U.S. 1131 (1998). *See, e.g.*, [United States v. Paradis](#), 351 F.3d 21, 29 (1st Cir. 2003) (“The government’s protective sweep argument fails because the officers had no reason to believe that there might be an individual posing a danger to the officers or others”); [United States v. Hogan](#), 38 F.3d 1148, 1150 (10th Cir. 1994), *cert. denied*, 514 U.S. 1008 (1995) (Protective sweep of murder suspect’s home after his arrest was not justified when “there was no indication that the officers were in danger from a hidden accomplice”). In making a determination on where reasonable suspicion exists, a totality of the circumstances test is used. [United States v. Burrows](#), 48 F.3d 1011, 1016 (7th Cir.), *cert. denied*, 515 U.S. 1168 (1995). Some factors that courts have found justify a protective sweep include:
- a) **Nervousness.** A suspect’s nervousness may be one factor that can justify a protective sweep. *See, e.g.*, [United States v. Cash](#), 378 F.3d 745, 748 (8th Cir. 2004); [Taylor](#), 248 F.3d at 514 (One factor justifying a protective sweep was the occupant’s nervous demeanor).
 - b) **Furtiveness.** A suspect’s furtiveness may also be a factor justifying a protective sweep. *See, e.g.*, [Cash](#), 378 F.3d at 748 (“Since an officer confronting a nervous and furtive suspect on the street has an articulable reason to be concerned for his safety and may therefore conduct a [Terry](#) stop and frisk, it follows that an officer arresting a nervous and furtive suspect in an unfamiliar residence has an articulable reason to be concerned for his safety and may therefore conduct a [Buie](#) sweep”); [United States v. Meza-Corrales](#), 183 F.3d 1116, 1124 (9th Cir. 1999) (One factor justifying a protective sweep was the occupants’ furtive actions).
 - c) **Noises Suggesting Additional Persons Are Present.** Where an officer hears noises indicating that additional persons are present at the residence, this factor may justify a protective sweep. *See, e.g.*, [Taylor](#), 248 F.3d at 514 (Protective sweep justified, in part, because officers “had heard noises suggesting that more than one person was present in the apartment”).
 - d) **Circumstantial Evidence Suggesting Criminal Associates Are Present.** In [United States v. Stover](#), 474 F.3d 904 (6th Cir. 2007), the fact that police identified a car parked in the driveway of defendant’s duplex registered to a local criminal who did not live at defendant’s address was sufficient to justify a protective sweep.

5. **Evidence Observed in Plain View While Lawfully Performing a Protective Sweep is Admissible.** “The seizure of obviously incriminating evidence found during a protective sweep is constitutionally permissible pursuant to the plain view doctrine.”. [United States v. Waldrop](#), 404 F.3d 365, 369 (5th Cir. 2005). See also [United States v. Munoz](#), 150 F.3d 401, 411 (5th Cir. 1998), cert. denied, 525 U.S. 1112 (1999)(“Since the arrest warrant places them in a lawful position to view the incriminating object - by authorizing their presence in the residence - and the search for the suspect in places where he might be hiding establishes their lawful right of access to it, they can seize it without a search warrant”); [United States v. Weems](#), 322 F.3d 18, 22 (1st Cir.), cert. denied, 540 U.S. 892 (2003)(Upholding plain view seizure made during protective sweep).

6. **Based Upon Reasonable Suspicion, An Officer May Conduct a Protective Sweep Inside the Premises If the Arrest Occurs Outside.** There is no bright-line rule that prohibits law enforcement officers from performing protective sweeps of premises when an arrest occurs outside of that building. “Although ... [Buie](#) involved an in-home arrest, courts have recognized that the same exigent circumstances present in [Buie](#) can sometimes accompany an arrest just outside of a residence or other structure.” [Cavely](#), 318 F.3d at 1002. “The fact that the arrest takes place outside rather than inside the home affects only the inquiry into whether the officers have a reasonable articulable suspicion that a protective sweep is necessary by reason of a safety threat.” [United States v. Colbert](#), 76 F.3d 773, 776-777 (6th Cir. 1996). Thus, “depending on the circumstances, the exigencies of a situation may make it reasonable for officers to enter a home without a warrant in order to conduct a protective sweep.” [Cavely](#), 318 F.3d at 1002. See, e.g., [Colbert](#), 76 F.3d at 776-77 (Protective sweep for arrest just outside home may be justified); [United States v. Lawlor](#), 406 F.3d 37, 41 (1st Cir. 2005) (Court “accept[ed] the position that a protective sweep may be conducted following an arrest that takes place just outside the home, if sufficient facts exist that would warrant a reasonably prudent officer to fear that the area in question could harbor an individual posing a threat to those at the scene”); [United States v. Soria](#), 959 F.2d 855 (10th Cir.), cert. denied, 506 U.S. 882 (1992) (Police search of nearby auto body shop after arresting the owner was a valid protective sweep); [United States v. Wilson](#), 306 F.3d 231, 238 (5th Cir. 2002) (Sweep reasonable where suspect arrested just outside entry); [United States v. Henry](#), 48 F.3d 1282, 1284 (D.C. Cir. 1995) ([Buie](#) rationale applicable to arrest just outside home); [United States v. Kimmons](#), 965 F.2d 1001 (11th Cir. 1992). As with an extended protective sweep, the officers must have reasonable suspicion to believe that the area to be swept harbors an individual who poses a danger to those at the arrest scene. As one court has noted: “If the exigencies to support a protective sweep exist, whether the arrest occurred inside or outside the residence does not affect the reasonableness of the officer's conduct. A bullet fired at an arresting officer standing outside a window is as deadly as one that is projected from one room to another. The likelihood of the destruction of evidence is the same whether the arrest is indoors or in an outside area within the sight or hearing range of an accomplice within the residence.” [United States v. Hoyos](#), 892 F.2d 1387, 1397 (9th Cir. 1989), cert. denied, 498 U.S. 825 (1990), *overruled on other grounds by* [United States v. Ruiz](#), 257 F.3d 1030 (9th Cir. 2001). See also, [United States v. Oguns](#), 921 F.2d 442, 446 (2d Cir. 1990) (Noting that protective sweep inside home is lawful even where arrest occurred outside “if the arresting officers had ‘(1) a reasonable belief that third persons [were] inside, and (2) a reasonable belief that the third persons (were) aware of the arrest outside the premises so that they might destroy evidence, escape or jeopardize the safety of the officers or the public’”); [United States v. Arch](#), 7 F.3d 1300, 1303 (7th Cir. 1993), cert. denied, 510 U.S. 1139 (1994) (dicta) (“Even cases that countenance protective sweeps when an arrest is made just outside the home do so on the theory that the officers are as much at risk from an unexpected assault on the defendant's doorstep as they might be inside the home”); [United States v. Jackson](#), 700 F.2d 181, 189 (5th Cir.), cert. denied, 464 U.S. 842 (1983) (“Arresting officers have a right to conduct a quick and cursory check of the arrestee's lodging immediately subsequent to arrest - even if the arrest is near the door but outside the lodging - where they have reasonable grounds to believe that there are other persons present inside who might present a security risk”).

Q. EPO #17: IDENTIFY CIRCUMSTANCES IN WHICH PERSONS ON THE PREMISES MAY OR MAY NOT BE SEARCHED FOR EVIDENCE OR FRISKED DURING THE EXECUTION OF A PREMISES WARRANT

1. **General Rule - Occupants May Be Detained During the Execution of a Premises Search Warrant for Contraband.** "A warrant to search for contraband found on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." [Michigan v. Summers](#), 452 U.S. 692, 705 (1981). See also [Muehler v. Mena](#), 544 U.S. 93 (2005)(same). This is sometimes referred to as the "[Summers](#)' Doctrine." "Such detentions are appropriate ... because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial." [Muehler](#), 544 U.S. at 98 (citing [Summers](#), 452 U.S. at 701-05). ++ To keep them from destroying evidence inside, suspects can also be barred from entering premises while a search warrant is being obtained. [Illinois v. McArthur](#), 531 U.S. 326 (2001) [suspect held on his trailer porch for the two hours it took to get a warrant after suspect's girlfriend told police he had marijuana and paraphernalia inside]. In [U.S. v. Cha](#), 597 F.3d 995 (9th Cir. 2010) , the 9th Circuit suppressed evidence after finding that a 26-hour delay to obtain a warrant was too long. Mr. and Ms. Cha operated a karaoke club next door to their residence in Guam. Responding to reports that the club was a front for forced prostitution, officers entered the club, heard complaints from women employees substantiating the reports, and secured the club and residence pending obtaining a search warrant. They conducted the warranted search more than 26 hours later and found evidence. To decide whether the seizure took too long, the 9th Circuit applied the four-factor test espoused by the Supreme Court in [Illinois v. MacArthur](#): (1) whether there was probable cause to believe that the residence contained evidence; (2) whether there was good reason to fear that, unless restrained, the defendant would destroy the evidence; (3) whether the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy; and (4) whether the seizure lasted no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant. In this case, the police refused to allow defendant into his home even with an escort to get his diabetes medicine [factor 3] and took more than 26 hours to get a warrant and begin their search [factor 4]. This violated the Fourth Amendment. Even absent evidence of bad faith, the delay was too long.

NOTE: The rule outlined in [Summers](#) also applies when the search warrant is being executed on a business or corporation. See, e.g., [United States v. Wallace](#), 323 F.3d 1109, 1111 (8th Cir. 2003)(Noting that, within a business context, "[t]he initial rounding up and temporary detention of employees" would be justified under [Summers](#)).

2. **There Are Three Justifications for the "[Summers](#)' Doctrine".** In [Summers](#), *supra*, the Supreme Court noted three distinct justifications for this limited type of seizure.
 - a. **Prevention of Flight In Case Incriminating Evidence is Found.** First, there is a "legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found." [Summers](#), 452 U.S. at 702.

- b. **Minimizing Risk of Harm to the Officers Executing the Warrant.** Second, there is a societal interest "in minimizing the risk of harm to [the] officers" who are serving the search warrant. [Id.](#) This interest is served where "the officers routinely exercise unquestioned command of the situation." [Id.](#) at 703; see also *Los Angeles County v. Rettele*, 127 S. Ct. 1989 (2007) ("[W]hen officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, the Fourth Amendment is not violated.")
 - c. **Orderly Completion of the Search.** Finally, "the orderly completion of the search may be facilitated if the occupants of the premises are presented. Their self-interest may induce them to open locked doors or locked containers to avoid the use of force that is not only damaging to property but may also delay the completion of the task at hand." [Id.](#) at 703.
3. **All Three Justifications for [Summers](#) Need Not Be Met to Justify a Temporary Detention.** Of course, not all of these interests must be met to justify a temporary detention under *Summers*. See [Leveto v. Lapina](#), 258 F.3d 156, 167 n.5 (3rd Cir. 2001) ("A detention may be reasonable even if fewer than all of [*Summers*] law enforcement interests are not present") (citation omitted); [United States v. Bohannon](#), 225 F.3d 615, 617 (6th Cir. 2000) (Same). Further, an "officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.'" [Muehler](#), 544 U.S. 93, 98 (citation omitted).
4. **Reasonable Force May Be Used In Detaining a Suspect Under [Summers](#).** "Inherent in [Summers](#)' authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention." [Muehler](#), 544 U.S. at 98-99 (Upholding officers' use of handcuffs to detain occupant of home during execution of search warrant for weapons and gang membership); but see [Meredith v. Erath](#), 342 F.3d 1057 (9th Cir. 2003) (absent justifiable circumstances, the detention of a person in handcuffs during the execution of a search warrant violates the Fourth Amendment. Using handcuffs to detain a subject who was loud and demanding, but who was not threatening, did not attempt to flee, and did not attempt to impede the officers' search for evidence of tax fraud was unreasonable). Further, "the risk of harm to officers and occupants is minimized 'if the officers routinely exercise unquestioned command of the situation.'" [Id.](#) (citing [Summers](#), 452 U.S. at 703).

5. **The Length of a Detention Under [Summers](#)**. The Supreme Court commented in [Summers](#) that “possibly a prolonged detention ... might lead to a different conclusion in an unusual case” *Id.* at 705 n.21. However, the Supreme Court did not specify how long the detention at issue lasted in that case. Nonetheless, “[t]he opinion of the Michigan Court of Appeals in the same case ... suggests that the detention was not short: [Summers](#) was detained during the time it took a police officer ‘to search the whole house’ and find heroin under a bar in the basement.” [Daniel v. Taylor](#), 808 F.2d 1401, 1405 (11th Cir. 1986). *Accord* [Leveto v. Lapina](#), 258 F.3d 156, 173 (3rd Cir. 2001) (“While the [[Summers](#)] Court did not extend this rule to cases ... featuring prolonged detention, the Court also did not foreclose such extensions. ... Moreover, lower courts suggested that rather lengthy detentions would fall within [Summers](#)’ purview.”); [United States v. Rowe](#), 694 F. Supp. 1420, 1424 (N.D. Cal. 1988) (“Although the [Summers](#) Court did not define the duration of permissible detention, it apparently contemplated that occupants could be detained long enough for police to complete extensive searches.”). Further, “[s]ince the dissenters in [Summers](#) expressly raised the point, the [Summers](#) majority apparently appreciated that the concept of detention during searches of premises entails the prospect of detentions lasting several hours.” [Daniel](#), 808 F.2d at 1405. *See also* [Maryland v. Buie](#), 494 U.S. 325, 334 (1990) (“[Summers](#) held that a search warrant for a house carries with it the authority to detain its occupants *until the search is completed*.”) (emphasis added). Unfortunately, “the law is ambiguous as to when detention in conjunction with a lawful, premises search becomes impermissible,” [Daniel](#), 808 F.2d at 1405. However, in at least one recent case, the Supreme Court upheld a detention of 2-3 hours. *See* [Muehler](#), 544 U.S. at 100 (detention upheld where “case involved the detention of four detainees by two officers during a search of a gang house for dangerous weapon”). *See also* [Leveto](#), 258 F.3d at 172-74 (eight-hour detention during execution of search warrant of veterinarian for evidence relating to tax offenses found unreasonable, but officers entitled to qualified immunity because “breadth of the [Summers](#)’ rule was highly uncertain”); [Daniel](#), 808 F.2d 1403-05 (finding defendant agents entitled to qualified immunity where law was uncertain as to permissible length of detention, in this case, two hours and forty-five minutes).
6. **Application of the “[Summers](#)’ Doctrine” to Warrants to Search for “Evidence.”** In [Summers](#), the search warrant at issue was for contraband (narcotics). Whether the rule introduced in [Summers](#) applies to search warrants to look for mere evidence of a crime is uncertain. The Supreme Court explicitly declined to address this issue, noting, “We do not decide whether the same result would be justified if the search warrant merely authorized a search for evidence.” *Id.* at 705 n.20. Additionally, the circuit courts of appeal have reached inconsistent results on this issue.
- a. Some Courts Distinguish Between “Contraband” and “Mere Evidence” For Purposes of [Summers](#). Further, the circuit courts of appeal have reached inconsistent results on this issue. Some courts have found the distinction between “contraband” and “evidence” to be significant. As noted by one court:

"A primary law enforcement interest served by such detention is the prevention of flight in the event that incriminating evidence is found during the search. In this connection, the distinction between searches for contraband and searches for evidence is material. It is not uncommon for a search for contraband to produce items that justify an immediate arrest of the owner or resident of the premises, and a person who anticipates that a search may imminently result in his or her arrest has a strong incentive to flee. By contrast, a search for evidence – particularly complicated documentary evidence – is much less likely to uncover items that lead to an immediate arrest. Thus, even if the search is successful the suspect may well remain at liberty for some time until the evidence is examined and an indictment is obtained. As a result, the incentive to flee is greatly diminished."

[Leveto](#), 258 F.3d at 168. See also [Daniel](#), 808 F.2d at 1404 (Holding that [Summers](#) Doctrine "is not applicable to a search for evidence, because the existence of mere evidence, as opposed to contraband, on the premises does not suggest that a crime is being committed on the premises").

- b. Some Courts Have *NOT* Distinguished Between "Contraband" and "Mere Evidence" For Purposes of [Summers](#). Alternatively, some courts have not distinguished for purposes of [Summers](#) between search warrants for contraband and those for evidence. See, e.g., [Rowe](#), 694 F. Supp. at 1424-25 (Court applied the [Summers'](#) Doctrine to a search for evidence).

7. **To Detain a Suspect Under [Summers](#), the Suspect's Proximity to the Residence Being Searched is a Factor.** "The proximity between an occupant of a residence and the residence itself may be relevant in deciding whether to apply [Summers](#), but it is by no means controlling." [United States v. Cavazos](#), 288 F.3d 706, 712 (5th Cir. 2002). See also [United States v. Cochran](#), 939 F.2d 337, 339 (6th Cir. 1991), cert. denied, 502 U.S. 1093 (1992) ("[Summers](#) does not impose upon police a duty based on geographic proximity"); [United States v. Vite-Espinoza](#), 342 F.3d 462, 468 (6th Cir. 2003) (Detention of individuals found in "backyard of a drug and counterfeit document distribution facility" legally detained under [Summers](#)).

- a. The Farther a Suspect is From the Residence, the Less Likely [Summers](#) Will Apply. Nonetheless, the farther a suspect is from the residence to be searched, the less likely the detention would be upheld under [Summers](#). See, e.g., [United States v. Sherrill](#), 27 F.3d 344, 346 (8th Cir.), cert. denied, 513 U.S. 1048 (1994) (Refusing to extend [Summers](#) to stop of defendant's vehicle one block from home); [United States v. Edwards](#), 103 F.3d 90, 93-94 (10th Cir. 1996) (Refusing to apply [Summers](#) to a defendant who was seized three blocks away from the search).

- b. [Summers](#) Has Been Applied to the Detention of Persons Who Approach a Residence During the Execution of a Search Warrant. Where an individual approaches and attempts to enter a residence where a search warrant is being executed, [Summers](#) may provide a justification for detaining that person. See, e.g., [Bohannon](#), 225 F.3d at 617 (Search and seizure of two men who attempted to enter residence during execution of a drug warrant justified under [Summers](#), because of need to protect officers' safety); [Baker v. Monroe Township](#), 50 F.3d 1186, 1192 (3d Cir. 1995) ("Although [Summers](#) itself only pertains to a resident of the house under warrant, it follows that the police may stop people coming to or going from the house if police need to ascertain whether they live there"); [Burchett v. Kiefer](#), 310 F.3d 937, 944 (6th Cir. 2002)(Holding that, "officers act within their [Summers](#) powers when they detain an individual who approaches a property being searched pursuant to a warrant, pauses at the property line, and flees when the officers instruct him to get down. Although this reaches beyond [Summers](#) 'occupants' language, it is consistent with the policies that [Summers](#) identified"); [United States v. Patterson](#), 885 F.2d 483, 485 (8th Cir. 1989)("The possible danger presented by an individual approaching and entering a structure housing a drug operation is obvious. In fact, it would have been foolhardy for an objectively reasonable officer not to conduct a security frisk under the circumstances").
8. **A Search Warrant Does Not Permit a Frisk of All Persons Present During Its Execution.** "The 'narrow scope' of the [Terry](#) exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is taking place." [Ybarra v. Illinois](#), 444 U.S. 85 (1979). Instead, "[a] non-protective search must normally be supported by probable cause and, with certain exceptions, must be authorized by a warrant." [Doe v. Groody](#), 361 F.3d 232, 238 (3rd Cir. 2004). See also [Leveto](#), 258 F.3d at 164 ("The Supreme Court has also held that possession of a warrant to search particular premises is not alone sufficient to justify a pat down of a person found on the premises at the time of execution"). As noted by the Court: "A person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." [Ybarra](#), 444 U.S. at 91.

9. **A Search Warrant Does Not Permit a Search of All Persons Present During Its Execution.** “A search warrant for a premises does not constitute a license to search everyone inside.” [Groody](#), 361 F.3d at 243. Instead, “[b]eyond [the] general authority to detain persons and make limited security searches ... there must be probable cause, or at least some degree of particularized suspicion, to justify further searches or seizures of individuals who are neither named in the warrant nor arrested as a consequence of the search.” [Rivera v. United States](#), 928 F.2d 592, 606 (2d Cir. 1991). Of course, “[i]f a warrant ... authorize[s] a search of [a person], then the officers [are] entitled to rely upon it to satisfy the probable cause requirement” [Groody](#), 361 F.3d at 243. See [Ybarra](#), 444 U.S. at 91 (“Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be”); [United States v. Di Re](#), 332 U.S. 581, 587 (1948) (“We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled”); [Khounsavanh](#), 113 F.3d at 287 (Holding that “probable cause to believe ... the premises contain contraband or evidence of a crime ... [does] not alone provide a sufficient basis for the police to ... search [a] defendant's person”).

R. EPO #18: IDENTIFY THE CIRCUMSTANCES IN WHICH EVIDENCE MAY BE SEIZED UNDER THE PLAIN VIEW DOCTRINE

++ Instructor Note: UPTP and IPOTP receive little instruction in the search warrant EPO's. To avoid placing examination questions in an unfamiliar context for these two programs and then requiring their students to apply the information in an unfamiliar context, separate examination questions have been written for UPTP and IPOTP. These questions require that the students apply the principles of EPO 7 [exceptions to the exclusionary rule] and EPO 18 [plain view seizure] in contexts that will arise in the ordinary course of their duties consistent with instruction constrained to those expectations.

1. **General Rule – Law Enforcement Officers May Seize Evidence in “Plain View” Without a Warrant.** “As a general rule, only items that are described in a search warrant may be seized in accordance with Fourth Amendment concerns.” [United States v. Waldrop](#), 404 F.3d at 368. “An exception to this general rule, however, is found where a police officer has a warrant to search a given area for specified objects and in the course of the search comes across some other article of incriminatory character. The property is then seizable under the plain view doctrine.” [United States v. Bills](#), 555 F.2d 1250, 1251 (5th Cir. 1977). As noted by the Supreme Court: “It is well established that under certain circumstances the police may seize evidence in plain view without a warrant.” [Coolidge v. New Hampshire](#), 403 U.S. 443, 465 (1971). “An example of the applicability of the 'plain view' doctrine is the situation in which the police have a warrant to search a given area for specified objects, and in the course of the search come across some other article of incriminating character.” [Horton v. California](#), 496 U.S. 128, 135 (1990).

2. **There are Three Requirements for a “Plain View” Seizure of Evidence.** In [Horton](#), *supra*, the Supreme Court outlined the three requirements that must be met for a permissible “plain view” seizure of evidence. First, a law enforcement officer must lawfully be in a position to observe the item; second, the incriminating nature of the item must be immediately apparent; and third, the officer must have a lawful right of access to the object itself. *Id.* at 135-137. See also [Boone v. Spurgess](#), 385 F.3d 923, 928 (6th Cir. 2004)(“The plainview exception permits a warrantless seizure where ‘(1) the officer is lawfully positioned in a place from which the object can be plainly viewed; (2) the incriminating character of the object is immediately apparent; and (3) the officer has a lawful right of access to the object itself’”(citation omitted)).

NOTE: At least one federal court has recognized a “plain hearing” corollary to the plain view doctrine. See [Ceballos](#), 385 F.3d at 1124 (“We have recognized that the plain view doctrine applie[s] in the context of overheard speech, creating a ‘plain hearing’ doctrine”)[citing [United States v. Ramirez](#), 112 F.3d 894, 851 (7th Cir.), *cert. denied*, 522 U.S. 892 (1997)]. The requirements for both “plain view” and “plain smell” are synonymous.

- a. **First, the Law Enforcement Officer Must Have Been in a Lawful Position to Observe the Item.** First, “it is ... an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.” [Horton](#), 496 U.S. at 136. In essence, this simply means that a law enforcement officer must have a lawful reason for being in the location where he observed the item.
- 1) **An Officer May Be Lawfully Present Based On the Execution of a Search or Arrest Warrant.** For example, where a law enforcement officer who makes his observations while serving a valid search or arrest warrant, he is lawfully present for purposes of the plain view doctrine. See, e.g., [United States v. Hamie](#), 165 F.3d 80, 82 (1st Cir. 1999)(Officers were lawfully on premises for plain view observation because they “had a valid warrant to search the premises”); [United States v. Calloway](#), 116 F.3d 1129, 1133 (6th Cir.), *cert. denied*, 522 U.S. 925 (1997) (Plain view seizure permissible where officers were present because they “were executing a valid search warrant”); [United States v. Reinholz](#), 245 F.3d 765, 777 (8th Cir.), *cert. denied*, 534 U.S. 896 (2001) (Officers executing a search warrant were lawfully on premises, so seizure of drug paraphernalia from vehicle in driveway was lawful under plain view doctrine where it was “immediately apparent through the car’s windows”); [Munoz](#), 150 F.3d at 411 (Please view seizure permissible during execution of arrest warrant and protective sweep).

2) **An Officer May Be Lawfully Present Based On An Exception to the Warrant Requirement.** The lawful presence element of the plain view doctrine has also been met where an exception to the warrant requirement has been found to exist. See, e.g., [United States v. Reed](#), 141 F.3d 644, 649 (6th Cir. 1998)(quoting [Horton](#), 496 U.S. at 135)("Where the initial intrusion that brings the police within plain view of ... an [incriminating] article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate"); [United States v. Jackson](#), 131 F.3d 1105, 1109 (4th Cir. 1997), cert. denied, 528 U.S. 945 (1999)(Where the officer's observations occurred after he received consent to enter the basement, the court noted, "an officer's presence in a residence is justified by a warrant or by any recognized exception to the warrant requirement, including consent, he may seize incriminating evidence that is in his plain view").

b. **Second, the Incriminating Nature of the Item Must Be "Immediately Apparent."** Second, "not only must the item be in plain view, its incriminating character must also be 'immediately apparent.'" [Horton](#), 496 U.S. at 136 (citations omitted). See also [United States v. Bruce](#), 109 F.3d 323, 328 (7th Cir.), cert. denied, 522 U.S. 838 (1997)(Noting "an officer only needs probable cause to believe that the item is linked to criminal activity in order for the plain view exception to the warrant requirement to apply").

1) **"Immediately Apparent" Means a Law Enforcement Officer Must Have Probable Cause.** This means a law enforcement officer must have probable cause that the object in plain view is subject to seizure, such as contraband. [Arizona v. Hicks](#), 480 U.S. 321, 326 (1987)("We have not ruled on the question whether probable cause is required in order to invoke the 'plain view' doctrine. ... We now hold that probable cause is required"). See also [Minnesota v. Dickerson](#), 508 U.S. 366, 375 (1993)("If ... the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object - i.e., if 'its incriminating character is not immediately apparent' - the plain-view doctrine cannot justify its seizure"); [Texas v. Brown](#), 460 U.S. 730, 742 (1983)(In discussing requirement that incriminating nature be "immediately apparent," Court noted the standard is not high, and that a plain view seizure is "presumptively reasonable, assuming there is probable cause to associate the property with criminal activity"); [United States v. Wells](#), 98 F.3d 808, 810 (4th Cir. 1996)(Where weapon was found in defendant's apartment during service of a search warrant, and defendant was known to be a convicted felon, incriminating nature of weapon was immediately apparent because the agents "had probable cause to believe the weapon was evidence of a crime at the time of the seizure").

- 2) **Courts Use Various Factors to Determine Whether the Incriminating Nature is "Immediately Apparent".** In determining whether an item's incriminating nature is immediately apparent, courts will examine various factors, such as "(1) the nexus between the seized object and the items particularized in the warrant; (2) whether the intrinsic nature or appearance of the seized object gives probable cause to associate it with criminal activity; and (3) whether probable cause is the direct result of the executing officer's instantaneous sensory perceptions." [United States v. Calloway](#), 116 F.3d 1129, 1133 (6th Cir.), cert. denied, 522 U.S. 925 (1997). See also [United States v. Carter](#), 378 F.3d 584, 589-90 (6th Cir. 2004) (Plain view exception applied to seizure of marijuana cigarette where the "smell and appearance" of the cigarette, combined with fact the suspect had admitted smoking marijuana a short time before, established probable cause "to consider it incriminating on its face"). As noted by the Supreme Court: "Regardless of whether the officer detects the contraband by sight or by touch ... the Fourth Amendment's requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures." [Dickerson](#), 508 U.S. at 376 (footnote omitted).
- 3) **++ Wallets: Illustrative case.** [U.S. v Muhammad](#), 604 F.3d 1022 (8th Cir. 2010) Less than 2 hours after an armed robbery of a nearby credit union, Muhammad was detained because he matched the video of someone who had come into the credit union just before the robbery, ostensibly to use the rest room. He was detained along with his companion, who matched the video of the robber who came into the credit union and robbed it while Muhammad was still in the restroom. Both men were frisked. Muhammad had a hard wallet in his pocket. The agent pulled it from his pocket and found it plainly bulging with protruding cash. Withdrawing the cash, the officer matched some of the bills to bills stolen from the credit union. The trial court refused to suppress the evidence and convicted the accused. The 8th Circuit affirmed. Even if the frisker knew this 3" x 5" object was a wallet, it was big enough to contain "a dangerous weapon such as a small knife, box cutter or razor blade." Officers must generally "pull the suspicious object out and actually inspect it" to determine whether the object presents a safety concern. Under the circumstances [two men matching the video found nearby a credit union robbed 2 hours before, stolen cash, large amount of cash], the cash was plainly and immediately incriminating. The plain-view seizure doctrine justified taking it out of the wallet and examining it further [Compare Arizona v. Hicks](#), 480 U.S. 321 (1987).

- c. **Third, the Law Enforcement Officer Must Have a Lawful Right of Access to the Evidence.** Finally, “not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself.” [Horton](#), 496 U.S. at 137. “The difference between ‘lawfully positioned’ and ‘lawful right of access’ is thus that the former refers to where the officer stands when she sees the item, and the latter to where she must be to retrieve the item.” [Boone](#), 385 F.3d at 928. As noted by the Supreme Court: “Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure.” [Horton](#), 496 U.S. at 137 n.7 (citations omitted).

INSTRUCTOR NOTE – PLAIN VIEW SEIZURE DOCTRINE

UPTP receives little or no training on obtaining and executing search warrants. In addition to not being tested on those EPOs specific to obtaining and executing search warrants, a separate set of test questions is used for UPTP in this EPO to avoid asking questions that require applying the plain view seizure doctrine in the context of executing search warrants. If time permits, this application can be covered in class for illustrative purposes, but UPTP testing emphasis is on applying plain view seizure in other contexts like automobile searches.

S. EPO #19: IDENTIFY FACT SITUATIONS WHERE WARRANTLESS SEARCHES ARE ALLOWED REGARDING MOTOR VEHICLES

1. **General Rule – Where Officers Have Probable Cause That a Readily Mobile Vehicle has Evidence or Contraband, a Warrantless Search May Be Conducted.** “It is well-settled that a valid search of a vehicle moving on a public highway may be had without a warrant, if probable cause for the search exists, i.e., facts sufficient to warrant a man of reasonable caution in the belief that an offense is being committed.” [Fernandez v. United States](#), 321 F.2d 283, 286-287 (9th Cir. 1963)(citations omitted). See also [United States v. Patterson](#), 140 F.3d 767, 773 (8th Cir), cert. denied, 525 U.S. 907 (1998)(A warrantless search of a vehicle is permissible where law enforcement officers have “probable cause to believe that contraband or evidence of criminal activity [will] be found”). This exception was first established by the Supreme Court in the 1925 case of [Carroll v. United States](#), 267 U.S. 132 (1925), and provides that, if a law enforcement officer has probable cause to believe that a vehicle has evidence of a crime or contraband located in it, a search of the vehicle may be conducted without first obtaining a warrant.
2. **There are Two Distinct Justifications for the Vehicle Exception.** There are two (2) separate and distinct rationales underlying this exception. See, e.g., [United States v. Pinela-Hernandez](#), 262 F.3d 974, 978 (9th Cir. 2001), cert. denied, 535 U.S. 1120 (2002)(“The reasons for this exception are two-fold: the expectation of privacy in one’s vehicle is less than in one’s home, and the mobility of vehicles necessitates faster action on the part of law enforcement officials”).

- a. **The Inherent Mobility of a Vehicle Makes Obtaining a Warrant Impracticable.** First, the inherent mobility of vehicles typically makes it impracticable to require a warrant to search, in that “the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.” [Carroll](#), 267 U.S. at 153. See also [United States v. Washburn](#), 383 F.3d 638, 641 (7th Cir. 2004)(“The original premise for the automobile exception was that a vehicle’s ‘ready mobility’ made an ‘immediate intrusion’ necessary to prevent the destruction of evidence”). As the Supreme Court has consistently observed, the inherent mobility of vehicles “creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.” [South Dakota v. Opperman](#), 428 U.S. 364, 367 (1976). For this reason, “searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property.” [Cooper v. California](#), 386 U.S. 58, 59 (1967) (citation omitted).
 - b. **Individuals Have a Reduced Expectation of Privacy in Vehicles Based on Pervasive Government Regulation.** While the original focus of the mobile conveyance exception was a vehicle’s inherent mobility, recent cases have focused on an individual’s reduced expectation of privacy in a vehicle to support allowing a warrantless search based on probable cause. See, e.g., [Pennsylvania v. LaBron](#), 518 U.S. 938 (1996); [California v. Carney](#), 471 U.S. 386 (1985); [Washburn](#), 383 F.3d at 641 (“In [Carney](#), however, the Supreme Court clarified that a second reason justified the exception even where an automobile is ‘not immediately mobile’ - the lesser expectation of privacy in a vehicle”). As stated by the Supreme Court: “Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspections stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.” [Opperman](#), 428 U.S. at 368.
3. **There are Two Requirements for a Valid Search Under the Vehicle Exception.** There are two (2) requirements for a valid search under the mobile conveyance exception. See, e.g., [United States v. Watts](#), 329 F.3d 1282, 1286 (11th Cir. 2003)(Noting “there are only two questions that must be answered in the affirmative before authorities may conduct a warrantless search of an automobile. The first is whether the automobile is readily mobile. The second prong of the test, probable cause, is determined under the facts of each case”).
 - a. **There Must Be Probable Cause to Believe Contraband or Evidence of a Crime is Located in the Vehicle.** First, there must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched. “Articulating precisely what ... ‘probable cause’ mean[s] is not possible.” [Ornelas v. United States](#), 517 U.S. 690, 695 (1996). Suffice it to say, probable cause cannot be “readily, or even usefully, reduced to a neat set of legal rules.” [Id.](#) at 695-696. Instead, the Supreme Court has found probable cause to exist “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.” [Id.](#) at 696. See also [United States v. Brown](#), 345 F.3d 574 (8th Cir. 2003)(Noting an “officer has probable cause to search a vehicle ‘when, given the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or evidence of a crime would be found in a particular place’”)(citation omitted).

- 1) **Only the Requirement for a Warrant is Excused.** In essence, this simply means that before conducting a warrantless search of a vehicle, a law enforcement officer should have sufficient facts available to him so that if he attempted to obtain a warrant from a magistrate judge, he would be successful. As noted by the Supreme Court in [United States v. Ross](#), 456 U.S. 798, 823 (1982): “[O]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize.” Thus, a search of a vehicle based upon probable cause “is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant had not actually been obtained.” *Id.* at 809. In determining whether probable cause exists, courts utilize a “totality of the circumstances” test. [Illinois v. Gates](#), 416 U.S. 213, 230-231 (1983).
- 2) **Probable Cause to Search a Vehicle May Be Established in a Variety of Different Ways.** Establishing probable cause to search a vehicle may be accomplished in a variety of ways.
 - a) **A Tip Provided By a Confidential Informant May Establish Probable Cause for a Vehicle Search.** For example, a law enforcement officer may be able to establish probable cause based on a tip provided to him by a reliable confidential informant. [Maryland v. Dyson](#), 527 U.S. 465 (1999). See also [United States v. Rodriguez](#), 367 F.3d 1019, 1026 (8th Cir. 2004)(Probable cause established where informant scheduled buy and defendant arrived as scheduled; informant identified defendant; and defendant exchanged “code” word with informant); [United States v. Lumpkin](#), 159 F.3d 983, 986 (6th Cir. 1998)(Noting that “probable cause may come from a confidential informant’s tip, when sufficiently detailed and corroborated by the independent investigation of law enforcement officers”).
 - b) **A Law Enforcement Officer’s Plain View Observations May Establish Probable Cause for a Vehicle Search.** Additionally, when a law enforcement officer personally observes evidence or contraband in plain view inside a vehicle, probable cause can arise. See, e.g., [United States v. Van Zee](#), 380 F.3d 342, 343-44 (8th Cir. 2004)(Finding law enforcement officers had probable cause to search a truck where one officer “saw the end of a glass tube in plain view on the truck console” and “reasonably believed it was part of a glass ‘crank’ pipe based on his experience as a narcotics investigator and what the agents had been told about [the defendant’s] drug activities”); [United States v. Fladten](#), 230 F.3d 1083, 1086 (8th Cir. 2000)(Where “an item commonly used in the manufacture of methamphetamine was in plain view in the back seat of the automobile,” probable cause existed for search of vehicle); [United States v. McGuire](#), 957 F.2d 310, 314 (7th Cir. 1992) (Discovery of open container of alcohol in car in violation of state law gave police probable cause to conduct warrantless search of car).

- c) **A Law Enforcement Officer's May Establish Probable Cause Using "Plain Smell."** Additionally, the "plain smell" corollary to the plain view doctrine may allow a law enforcement officer to establish probable cause to search a vehicle based upon his or her sense of smell. See, e.g., [United States v. Foster](#), 376 F.3d 577, 588 (6th Cir. 2004) ("Accordingly, when the officers detected the smell of marijuana coming from Foster's vehicle, this provided them with probable cause to search the vehicle without a search warrant"); [United States v. Miller](#), 812 F.2d 1206, 1208-1209 (9th Cir. 1987)(Probable cause established where "the police officers who arrived at the Elm Street address detected a strong smell of phylacetic acid, known to be used in the manufacture of methamphetamine, emanating from Miller's car. In addition, the officers observed a handgun in plain view on the front floor and laboratory equipment commonly used in the manufacture of methamphetamine on the backseat of Miller's car. These plain view, plain smell observations ... gave the officers sufficient independent probable cause to search Miller's car without a warrant"); [United States v. Harris](#), 958 F.2d 1304 (5th Cir.), cert. denied, 506 U.S. 898 (1992)(plain smell); [United States v. Anderson](#), 468 F.2d 1280 (10th Cir. 1972)(plain smell); [United States v. Taylor](#), 162 F.3d 12, 21 (1st Cir. 1998)(Officers had probable cause to search car for narcotics based upon "strong odor' of marijuana").

++ LEO's Specialized Knowledge and Keen Observation Combine to Build Probable Cause – Illustrative Case. In *U.S. v. Banuelos-Romero*, 597 F.3d 763 (5th Cir. 2010), the 5th Circuit affirmed the trial court's finding that probable cause to conduct a Carroll search existed on these facts. Following a lawful stop on a Texas interstate, Trooper Dollar "placed his hand on the car's windshield and noticed fresh black adhesive. Closer inspection revealed silicone sealant slathered all over the sides of the windshield. Trooper Dollar also smelled a strong silicone odor coming from inside the vehicle. Trooper Dollar also noticed scarring on screws holding a plastic piece between the hood and windshield, which would have to be removed to replace the windshield. Trooper Dollar also observed that Mercury emblems had been removed from the car and replaced with Ford emblems. The computer check revealed that the car was actually a 2004 Mercury Grand Marquis, which has an identical body to a Ford Crown Victoria. Trooper Dollar found the replacement of the windshield and the attempt to hide the make and model of the car suspicious because he knew from his training that the Mercury Grand Marquis is a popular drug-smuggling car because it has a hidden compartment, known as a 'firewall,' located between the dashboard and the engine of the vehicle. Trooper Dollar knew the firewall on the Grand Marquis is only accessible by removing the windshield or dashboard." A later search of the car produced methamphetamine hidden in the firewall.

b. **The Vehicle Must Be “Readily Mobile” to Search It Under the Vehicle**

Exception. The second requirement for a valid search under the mobile conveyance exception is that the vehicle be “readily mobile.” “All that is necessary to satisfy this element is that the automobile is operational.” [United States v. Watts](#), 329 F.3d 1282, 1286 (11th Cir. 2003). Thus, “for a vehicle to fall within the automobile exception, it is not necessary that it be occupied or moving at the time of the police officer’s intrusion into the vehicle.” [United States v. Wesley](#), 918 F. Supp. 81, 85 (W.D.N.Y. 1996). Stated differently, “readily mobile” does not mean that the vehicle be moving at the time it is encountered, only that the vehicle be capable of ready movement. Illustrative on this point is [California v. Carney](#), 471 U.S. 386 (1985). In [Carney](#), the Court noted that, “when a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes – temporary or otherwise – the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.” [Id.](#) at 392-393. While the Supreme Court did not discuss the applicability of the mobile conveyance exception to a motor home that is “situated in a way or place that objectively indicates that it is being used as a residence,” [Id.](#) at 394 n.3, they did address “several factors which bear on whether or not a vehicle comes within the automobile exception for Fourth Amendment purposes.” [United States v. Hatley](#), 15 F.3d 856, 859 (9th Cir. 1994) (quotation omitted). Among the factors deemed relevant to this decision are:

- 1) The Location of the Vehicle;
- 2) Whether the Vehicle was Readily Mobile or Elevated on Blocks;
- 3) Whether the Vehicle was Licensed;
- 4) Whether the Vehicle was Connected to Utilities;
- 5) Whether it had Convenient Access to a Public Road.

[Carney](#), 471 U.S. at 394 n.3. See also [Hatley](#), 15 F.3d at 859; [United States v. Brookins](#), 345 F.3d 231, 238 (4th Cir. 2003)(Holding vehicle exception applied where “motor vehicle at issue was clearly operational and therefore ‘readily movable’”).

c. ++ **An Unhitched Truck Trailer is Readily Mobile – Illustrative Case.** U.S. v. Navas, 597 F.3d 492 (2nd Cir. 2010). Using a court-ordered authorization to track the accused with his cell phone, DEA agents followed the semi tractor-trailer rig he was driving to a warehouse. The accused and his partner parked it inside the warehouse, lowered the trailer legs, unhitched the tractor and drove it to McDonalds. They were arrested there. The SIA produced workgloves, power drills and bits. Accused admitted that narcotics were stashed in a secret compartment under the trailer's roof. After getting consent to enter the warehouse, agents conducted a warrantless search of the unhitched trailer. Ripping off the roof led to the discovery of 230 kilograms of cocaine. The 2nd Circuit reversed the trial court's suppression of the narcotics: "As we recently made clear, a vehicle's inherent mobility-- not the probability that it might actually be set in motion-- is the foundation of the mobility rationale. See United States v. Howard, 489 F.3d at 493.... Under our case law, the mobility rationale articulated in Carroll does not turn on case-by-case determinations by agents in the field regarding either the probability that a vehicle could be mobilized or the speed with which movement could be achieved. Rather, "[w]hether a vehicle is 'readily mobile' within the meaning of the automobile exception has more to do with the inherent mobility of the vehicle than with the potential for the vehicle to be moved from the jurisdiction, thereby precluding a search." Howard, 489 F.3d at 493.... When the Supreme Court introduced the mobility rationale in Carroll v. U.S., 267 U.S. 132 (1925), it referenced "wagon[s]," which, like trailers, require an additional source of propulsion before they can be set in motion. At least for purposes of the Fourth Amendment, a trailer unhitched from a cab is no less inherently mobile than a wagon without a horse. The trailer remained inherently mobile as a result of its own wheels and the fact that it could have been connected to any cab and driven away [emphasis in original]. The fact that the trailer was detached from a cab with its legs dropped, did not eliminate its inherent mobility. Even where there is little practical likelihood that the vehicle will be driven away, the automobile exception applies when that possibility exists because of the vehicle's inherent mobility."

4. **No Exigency is Required to Conduct a Search Under the Vehicle Exception.** There is no "exigency" required to conduct a warrantless vehicle search; all that is required is a mobile conveyance and probable cause. Thus, even if a law enforcement officer had the opportunity to obtain a warrant and failed to do so, the search will still be valid if the two requirements discussed above were present. See Maryland v. Dyson, 527 U.S. 465, 466 (1999) (Court relied upon previous decision in holding that "the automobile exception does not have a separate exigency requirement: 'If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits the police to search the vehicle without more'"); .

5. **A Search Under the Vehicle Exception May Be Conducted Immediately at the Scene or at a Later Time After the Vehicle Has Been Impounded.** Once a law enforcement officer has probable cause to search a readily mobile vehicle, the search may be conducted immediately or later at the police station. "There is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure." [United States v. Johns](#), 469 U.S. 478, 484 (1985)(citations omitted). In [Johns](#), the Supreme Court upheld the warrantless search of three packages that had been seized from a vehicle three days earlier, noting, "the justification to conduct such a warrantless search does not vanish once the car has been immobilized." *Id.* See also [Michigan v. Thomas](#), 458 U.S. 259, 261 (1982)(per curiam)("The justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant"); [Chambers v. Maroney](#), 399 U.S. 42, 52 (1975)(Noting "there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained"); [Texas v. White](#), 423 U.S. 67, 68 (1975)(per curiam)(Noting "police officers with probable cause to search an automobile on the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant"); [United States v. Rodriguez](#), 367 F.3d 1019, 1027 (8th Cir. 2004)(Where probable cause exists to search a vehicle, search "may take place at a separate place and time")*[citing United States v. Winters*, 221 F.3d 1039, 1041 (8th Cir. 2000)].

NOTE: Notwithstanding the above, law enforcement officers must act "reasonably" and may not "indefinitely retain possession of a vehicle and its contents before they complete a vehicle search." [Johns](#), 469 U.S. at 487. Further, where time permits, a search warrant for the vehicle should be obtained, even in situations where a warrantless search may be permissible.

6. **The Vehicle Exception May Apply Even Where the Vehicle is Parked on Private Property.** "[T]he Supreme Court has never held that a vehicle's location on private property forecloses application of the [vehicle] exception under all circumstances." [United States v. Shepherd](#), 714 F.2d 316, 319 (4th Cir. 1983), *cert. denied*, 466 U.S. 938 (1984). See also [Brookins](#), 345 F.3d at 237 n.8 (Declining defendant's invitation to adopt a "bright-line rule, whereby the automobile exception may never apply when a vehicle is stationed on private, residential property"); [Hatley](#), 15 F.3d at 858-59 ("Though we have never addressed the precise issue of whether the vehicle exception applies to an inoperable vehicle, we have explicitly held that the vehicle exception applies to a search of a vehicle parked on a private driveway")*[citing United States v. Hamilton*, 792 F.2d 837, 843 (9th Cir. 1986)]; [United States v. Markham](#), 844 F.2d 366, 368 (6th Cir.), *cert. denied*, 488 U.S. 843 (1988)("Although this case presents a variation on [Carney](#) because the vehicle searched was parked in a private driveway, the Court finds that the [Carney](#) rationale is controlling").
7. **The Scope of a Search Under the Vehicle Exception**

- a. **General Rule – A Search Under the Vehicle Exception Will Extend to Every Place in the Vehicle Where the Object of the Search Could Be Located.** The Supreme Court in [United States v. Ross](#), 456 U.S. 798 (1982), laid out the scope of a search conducted pursuant to the mobile conveyance exception. There, the Court stated: “We hold that the scope of the warrantless search authorized by [the mobile conveyance] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents that may conceal the object of the search.*” [Id.](#) at 825 (emphasis added).
- 1) **Law Enforcement Officers May Only Search Those Areas of the Vehicle Where the Object of the Search Could Be Located.** It should be remembered, however, that probable cause to search does not automatically entitle a law enforcement officer to search every part of a vehicle. See, e.g., [Ross](#), 456 U.S. at 824 (“The scope of a warrantless search of an automobile ... is defined by the object of the search and the places in which there is probable cause to believe that it may be found”). For example, where there is probable cause to believe that a vehicle contains drugs, a search of the glove compartment would be permissible. Alternatively, if there is probable cause that the vehicle contains a large stolen television, a search of the glove compartment would be impermissible, in that the television could not be concealed in that location. Any mobile conveyance search is necessarily limited by what it is the officers are seeking in their search. In sum, if a search warrant could authorize the officers to search in a particular location, such as the passenger compartment or trunk of the vehicle, the officers may search there without a warrant.
 - 2) **Particularized Probable Cause is Generally Not Required Before Searching a Trunk.** A question that often arises concerns whether a law enforcement officer must have “particularized” suspicion that evidence (e.g., drugs) are located in the trunk before a search of that area could ensure. Some examples are provided below.

- a) **Drugs.** If drugs (or drug paraphernalia) are found in the passenger compartment of a vehicle, this will typically allow for a search of the trunk for additional drugs. This is true even in situations where the drugs found in the passenger compartment amounted to what would be considered “personal use” amounts. See [United States v. Turner](#), 119 F.3d 18, 20 (D.C. Cir. 1997); [United States v. Loucks](#), 806 F.2d 208, 210-11 (10th Cir. 1986); [United States v. Burnett](#), 791 F.2d 64, 67 (6th Cir. 1986); [United States v. Hough](#), 944 F. Supp. 20, 23 & n.2 (D.D.C. 1996); [United States v. Fladten](#), 230 F.3d 1083, 1086 (8th Cir. 2000) (Holding that drug paraphernalia on the backseat of a car parked near a house where drug-related activity took place provided probable cause for a trunk search); [United States v. Parker](#), 72 F.3d 1444, 1450 (10th Cir. 1995) (Holding that drugs and a gun found in a passenger compartment, in combination with the odor of marijuana smoke, provided probable cause to search the trunk, although the odor alone would have been insufficient); [United States v. Haley](#), 669 F.2d 201, 204 (4th Cir.), cert. denied, 457 U.S. 1117 (1982) (Holding that marijuana odor and a bag of marijuana found in a car were sufficient to support a trunk search). However, at least one circuit has held that, “although the smell of burnt marijuana emanating from a vehicle provides probable cause to search the passenger compartment of that vehicle, if that search fails to uncover corroborating evidence of contraband, probable cause to search the trunk of the vehicle does not exist.” [United States v. Wald](#), 216 F.3d 1222, 1229 (10th Cir. 2000) [citing [United States v. Nielsen](#), 9 F.3d 1487, 1491 (10th Cir. 1993)].
- b) **Alcohol.** Finding an open container of alcohol in a vehicle will establish probable cause for a search of that vehicle, including “every part of the vehicle and its contents that could conceal additional contraband, including the area beneath the passenger seat and the trunk.” [McGuire](#), 957 F.2d at 314.
- c) **Weapons.** Discovering weapons in the passenger compartment of a vehicle may also provide probable cause to search the trunk of the vehicle. See, e.g., [Brown](#), 334 F.3d at 1171 (Sustaining search of trunk because it was reasonably likely, in light of what the passenger compartment contained (a pistol) and other evidence (including multiple gunshots heard recently in the neighborhood), that another weapon would be in the trunk); [United States v. Alvarez](#), 899 F.2d 833, 839 (9th Cir. 1990), cert. denied, 498 U.S. 1024 (1991) (Holding that police officers had probable cause to search the trunk after police discovered two concealed weapons on defendant and had reason to believe that the defendant's trunk contained more contraband).

- d) **Stolen Property.** At least one court has found that a search of the trunk for stolen property is permissible where fraudulent identifications and credit cards were found in the passenger compartment. See [United States v. Brown](#), 374 F.3d 1326, 1328-29 (D.C. Cir. 2004) (Probable cause existed to search the trunk for stolen property where a search of the passenger compartment uncovered two false identifications, a credit card in the same name as one of the false identifications, and a batch of checks under the same name on the false identification).
 - e) **Canine Alerts to the Passenger Compartment of Vehicle.** When a trained drug dog alerts to the passenger compartment of a vehicle, some (but not all) courts hold that the alert provides probable cause to search the trunk. Compare [United States v. Rosborough](#), 366 F.3d 1145, 1153 (10th Cir. 2004) (“Thus, we hold that a canine alert toward the passenger area of a vehicle gives rise to probable cause to search the trunk as well”), with [United States v. Seals](#), 987 F.2d 1102, 1107 n.8 (5th Cir.), cert. denied, 510 U.S. 853 (1993) (Concluding that an initial canine alert in the passenger compartment gives rise to probable cause to search only the passenger compartment of the vehicle and not the rest of the vehicle).
- b. **Containers May Be Searched Under the Vehicle Exception if the Object of the Search Could Be Located in the Container.** A law enforcement officer may also search locked or unlocked containers located in the vehicle, if the object of the search could be concealed inside. See, e.g., [United States v. Knight](#), 306 F.3d 534, 536 (8th Cir. 2002) (Noting “the probable cause that justifies the search of a vehicle also justifies the search of the containers within the vehicle that could conceal the object of the search”); [United States v. Edwards](#), 242 F.3d 928, 939 (10th Cir. 2001) (Noting “if there is probable cause to search a vehicle, the police are allowed to search any package within the vehicle that is capable of concealing the object of the search”); [United States v. Turner](#), 119 F.3d 18, 22 (D.C. Cir. 1997) (Noting “the police may search any container found in an automobile without a warrant ‘if their search is supported by probable cause’”)(citation omitted). While the rule on containers appears to be relatively straightforward, this issue merits additional discussion.

- 1) **Where Probable Cause Exists Regarding a Specific Container Placed in a Vehicle, the Container May Be Searched.** If a law enforcement officer has probable cause to believe a specific container placed inside a vehicle contains evidence of a crime or contraband, the vehicle may be stopped and searched as is necessary to retrieve that container. Once the container is retrieved, it may be searched without a warrant under the vehicle exception. In these types of situations, the Supreme Court's decision in [California v. Acevedo](#), 500 U.S. 565 (1991), is controlling. In [Acevedo](#), the police had probable cause that a container placed in the trunk of a vehicle contained marijuana. Believing they might lose the evidence if they sought a search warrant, the officers stopped the vehicle, opened the trunk, and searched the container (a paper bag). Marijuana was found inside the bag. In finding the search of the paper bag legal, the Supreme Court held that, when law enforcement officers have probable cause that a specific container placed inside a vehicle has evidence of a crime or contraband located inside of it, they may search the container, locked or unlocked, under the mobile conveyance exception. However, the probable cause relating to the container does not support a general search of the vehicle. If the officers wish to search the entire vehicle, they must have some other justification to do so, such as consent or a search incident to arrest. As stated by the Supreme Court: "In the case before us, the police had probable cause to believe that the paper bag in the automobile's trunk contained marijuana. That probable cause now allows a warrantless search of the paper bag. The facts ... reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment." [Id.](#) at 580.
- 2) **Where Probable Cause Extends to the Vehicle Generally and Not a Specific Container.** If law enforcement officers have probable cause to search the entire vehicle and discover a closed container during their search, the officers may search the container, whether locked or unlocked, if what they are seeking could be concealed inside of it. As noted by the Supreme Court in [Ross](#), *supra*: "The scope of a warrantless search of an automobile ... is not defined by the nature of the container in which contraband is secreted. Rather, it is defined by the object of the search and the place in which there is probable cause to believe that it may be found." [Ross](#), 456 U.S. at 824.
- 3) **The Vehicle Exception Includes Passenger's Belongings.** Further, the rule of [Ross](#) has been extended to include a passenger's belongings. In [Wyoming v. Houghton](#), 526 U.S. 295 (1999), the Supreme Court noted, "neither [Ross](#) nor the historical evidence it relied upon admits of a distinction among packages or containers based on ownership." [Id.](#) at 302. Accordingly, "police officers with probable cause to search a car may inspect passengers' belongings found in the car capable of concealing the object of the search." [Id.](#) at 307.

T. EPO #20: IDENTIFY FACT SITUATIONS WHERE WARRANTLESS SEARCHES ARE ALLOWED DURING EXIGENT CIRCUMSTANCES, E.G., HOT PURSUIT, DESTRUCTION OR REMOVAL OF EVIDENCE, AND EMERGENCY SCENES

1. **General Rule – Warrantless Searches are Permitted Where Exigent Circumstances Exist.** It is firmly ingrained in our system of law that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.” [Mincey v. Arizona](#), 437 U.S. 385, 390 (1978)(emphasis in original)(citation omitted). However, while “there is a strong preference for searches and entries conducted under the judicial auspices of a warrant, the United States Supreme Court has crafted a few carefully drawn exceptions to the warrant requirement to cover situations where ‘the public interest requires some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search.’” [United States v. Holloway](#), 290 F.3d. 1331, 1334 (11th Cir. 2002), *cert. denied*, 537 U.S. 1161 (2003)[*quoting* [Arkansas v. Sanders](#), 442 U.S. 753, 759 (1979)]. The Supreme Court has recognized that “exigent circumstances” constitute one such exception. [Michigan v. Tyler](#), 436 U.S. 499, 509 (1978)(“Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant”). See also [Warden v. Hayden](#), 387 U.S. 294, 298-99 (1967)(“The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others”); [Radloff v. City of Oelwein](#), 380 F.3d 344, 348 (8th Cir. 2004)(“An exception to the warrant requirement permits a law enforcement officer to enter and search a home if he acts with probable cause and exigent circumstances exist”).
2. **“Exigent Circumstances” - Defined.** “Exigent circumstances are defined as ‘those circumstances that would cause a reasonable person to believe that entry ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.’” [United States v. McConney](#), 728 F.2d 1195, 1199 (9th Cir.)(en banc), *cert. denied*, 469 U.S. 824 (1984). See also [Ewolski v. City of Brunswick](#), 287 F.3d 492, 501 (6th Cir. 2002)(“Exigent circumstances exist where there are ‘real immediate and serious consequences’ that would certainly occur were a police officer to ‘postpone action to get a warrant’”)(citation and internal brackets omitted).
3. **The Burden of Proving “Exigent Circumstances” is on the Government.** The burden of proving that an “exigent circumstance” existed rests with the government. See [United States v. Jeffers](#), 342 U.S. 48, 51 (1951)(Noting that, when a claim of exigent circumstances is made, “then the burden is on those seeking the exemption to show the need for it”). In such circumstances, the government must show:
 - a. **The Existence of Probable Cause;** ... and
 - b. **The Existence of An Exigent Circumstance.**

See [United States v. Tobin](#), 923 F.2d 1506, 1510 (11th Cir.), cert. denied, 502 U.S. 907 (1991) (“A warrantless search is allowed, however, where both probable cause and exigent circumstances exist”); [United States v. Lindsey](#), 877 F.2d 777, 780 (9th Cir. 1989) (When exigent circumstances are claimed, “the burden is on the government to demonstrate that: (1) the police had probable cause to search [the defendant’s] apartment; and (2) exigent circumstances excused the lack of a warrant”).

4. **To Have An Exigency, An Officer Must Have An Objectively Reasonable Belief.** “In evaluating whether a warrantless entry was justified by exigent circumstances, we consider the circumstances that confronted the police at the time of the entry.” [United States v. Leverington](#), 397 F. 3d 1112, 1116 (8th Cir. 2005). Accordingly, the question that must be addressed in an exigent circumstances cases is “what an objectively reasonable officer on the scene could have believed, for if such an officer would have had sufficient grounds to believe there was an exigency, then the Fourth Amendment did not require a warrant, and the suspect’s constitutional rights were not violated by a warrantless entry.” Id.
5. **There Are a Variety of Factors to Consider in Determining Whether an “Exigency” Exists Justifying a Warrantless Entry Into a Home.** “The essential question in determining whether exigent circumstances justified a warrantless entry is whether law enforcement agents were confronted by an ‘urgent need’ to render aid or take action.” [United States v. MacDonald](#), 916 F.2d 766, 769 (2d Cir. 1990)(en banc), cert. denied, 498 U.S. 119 (1991). Among the factors considered by courts in determining whether “exigent” circumstances actually existed are the following:
 - a. The Gravity or Violent Nature of the Offense With Which the Suspect is to Be Charged;
 - b. A Reasonable Belief That the Suspect is Armed;
 - c. Probable Cause to Believe That the Suspect Committed the Crime;
 - d. Strong Reason to Believe That the Suspect is in the Premises Being Entered;
 - e. A Likelihood That Delay Could Cause the Escape of the Suspect or the Destruction of Essential Evidence; or
 - f. Jeopardize the Safety of Officers or the Public.

See, e.g., [MacDonald](#), 916 F.2d at 769; [United States v. Hicks](#), 389 F.3d 514 (5th Cir. 2004)(Noting that “exigent circumstances include those in which officers reasonably fear for their safety, where firearms are present, or where there is a risk of a criminal suspect’s escaping or fear of destruction of evidence”) (citation omitted); [United States v. Reed](#), 572 F.2d 412, 424 (2d Cir.), cert. denied, 439 U.S. 913 (1978); [United States v. Standridge](#), 810 F.2d 1034, 1037 (11th Cir.)(per curiam), cert. denied, 481 U.S. 1072 (1987); [United States v. Baldacchino](#), 762 F.2d 170, 176 (1st Cir. 1985); [United States v. Kulcsar](#), 586 F.2d 1283, 1287 (8th Cir. 1978); [United States v. Phillips](#), 497 F.2d 1131, 1135 (9th Cir. 1974); [United States v. Shye](#), 492 F.2d 886, 891 (6th Cir. 1974) (per curiam); [Vance v. North Carolina](#), 432 F.2d 984, 990 (4th Cir. 1970).

6. **Once the Exigency Ends, a Law Enforcement Officer's Right to Search Terminates.** The scope of a warrantless search is "strictly circumscribed by the exigencies which justify its initiation." [Mincey](#), 437 U.S. at 393 (citation omitted). Thus, once the emergency circumstances that justified the warrantless entry have been concluded, the right to conduct a warrantless search also concludes. See also [United States v. Goree](#), 365 F.3d 1086, 1090 (D.C. Cir. 2004)(Noting that, under exigent circumstances exception, "the subsequent search must be 'no broader than necessary'"(citation omitted); [United States v. Pierson](#), 219 F.3d 803, 806 (8th Cir. 2000)(Warrantless entry under exigent circumstances "must be 'limited in scope to the minimum intrusion necessary to prevent the destruction of evidence'"); [United States v. Aquino](#), 836 F.2d 1268, 1272 (10th Cir. 1988)(same).
7. **There Are Three Recurring Types of Exigent Circumstances.** A number situations are covered under the definition of "exigent circumstances." See, e.g., [Holloway](#), 290 F.3d at 1334 (This exception "encompasses several common situations where resort to a magistrate for a search warrant is not feasible or advisable, including danger of flight or escape, loss or destruction of evidence, risk of harm to the public or the police ... and hot pursuit"); [United States v. Reid](#), 69 F.3d 1109, 1113 (11th Cir. 1995)("Recognized situations in which exigent circumstances exist include: 'danger of flight or escape; danger of harm to police officers or the general public; risk of loss, destruction, removal, or concealment of evidence; and hot pursuit of a fleeing suspect'"(citation omitted); [United States v. Rohrig](#), 98 F.3d 1506, 1515 (6th Cir. 1996)("While it is not possible to articulate a succinct yet exhaustive list of circumstances that qualify as "exigent," we have previously characterized the situations in which warrantless entries are justified as lying within one of four general categories: (1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect's escape, and (4) a risk of danger to the police or others"); [United States v. Francis](#), 327 F.3d 729, 735 (8th Cir. 2003)("Although the exigent-circumstances exception is narrowly drawn ... it does justify immediate police action without a warrant under limited circumstances, such as where lives are threatened, a suspect's escape is imminent, or evidence is about to be destroyed"). Discussed below are three of the most common types of exigent circumstances encountered by law enforcement officers.
- a. **One Type of Exigent Circumstance is "Hot Pursuit."** "The 'hot pursuit' justification for warrantless entry into a house derives primarily from the Supreme Court cases of [Warden v. Hayden](#), 387 U.S. 294 (1967), and [United States v. Santana](#), 427 U.S. 38 (1976)." [United States v. Rohrig](#), 98 F.3d 1506, 1515 (6th Cir. 1996). While the concept of "hot pursuit" is used often when discussing exigent circumstances, defining what is meant by the term is more problematic. In general, the following elements must exist for "hot pursuit" to be viable:
- 1) **The Pursuit Must Begin in a Public Place.** First, "hot pursuit" occurs when a suspect enters a home from a public place. As noted by the Supreme Court: "A suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place." [United States v. Santana](#), 427 U.S. 38, 43 (1976). See also [Warden v. Hayden](#), 387 U.S. 294 (1967).

- 2) **A Law Enforcement Officer Must Have Probable Cause to Arrest.** Second, probable cause must exist to arrest the suspect. See, e.g., [United States v. Lopez](#), 989 F.2d 24, 27 (1st Cir.), cert. denied, 510 U.S. 872 (1993); [United States v. Jones](#), 204 F.3d 541, 543 (4th Cir. 2000); [United States v. Sewell](#), 942 F.2d 1209, 1212 (7th Cir. 1991), cert. denied, 503 U.S. 962 (1992); [United States v. Ramos](#), 933 F.2d 968, 972 (11th Cir. 1991), cert. denied, 503 U.S. 908 (1992).
- 3) **The Crime Involved in the “Hot Pursuit” Must Be “Serious.”** Third, the warrantless entry into the home must be for a “serious” crime. “An important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made.” [Welsh v. Wisconsin](#), 466 U.S. 740, 753 (1984). As a practical matter, this means that the more “serious” the crime, the more likely that the warrantless entry to arrest will be upheld. While the Supreme Court in [Welsh](#) declined to “consider whether the Fourth Amendment may impose an absolute ban on warrantless home arrests for certain minor offenses,” [Id.](#) at 750 n.11, they nonetheless noted “it is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor.” [Id.](#) at 753. See, e.g., [United States v. Mayo](#), 792 F. Supp. 768, 772 (M.D. Ala. 1992)(“The offense of menacing, although categorized as a misdemeanor, involves threats of ‘imminent serious physical injury’ which could support a warrantless in-home arrest. This element of physical violence distinguishes menacing from other misdemeanor offenses that have been deemed too “minor” to justify a warrantless home arrest”).
- 4) **There Must Be Immediate or Continuous Pursuit.** Fourth, there must be an “immediate or continuous” pursuit of the suspect for “hot pursuit” to apply. See [Welsh](#), 466 U.S. at 753 (“The claim of hot pursuit is unconvincing because there was no immediate or continuous pursuit of the [defendant] from the scene of a crime”); [United States v. Johnson](#), 256 F.3d 895, 907 (9th Cir. 2001)(“The hot pursuit exception to the warrant requirement only applies when officers are in ‘immediate’ and ‘continuous’ pursuit of a suspect from the scene of the crime”); [United States v. Baldacchino](#), 762 F.2d 170, 177 (1st Cir. 1985)(“The pursuit must be immediate or relatively continuous to justify the failure to secure a warrant”); [United States v. Lyons](#), 2000 U.S. Dist. LEXIS 14890 at *5 (E.D. La. 2000)(“The ‘hot pursuit’ exception is evidenced by facts indicating that there was an immediate or continuous pursuit from the scene of the crime”).

- 5) **There Must Be Probable Cause to Enter the Residence.** Finally, an important limitation to the doctrine of exigent circumstances is that these circumstances “justify a warrantless entry into a residence only when there is also probable cause to enter the residence.” [United States v. Johnson](#), 9 F.3d 506, 509 (6th Cir. 1993). See also [United States v. Jones](#), 239 F.3d 716, 719 & n.2 (5th Cir. 2001); [United States v. Burgos](#), 720 F.2d 1520, 1525 (11th Cir. 1983); [United States v. Turner](#), 650 F.2d 526, 528 (4th Cir. 1981). [United States v. Socey](#), 846 F.2d 1439, 1444 n.5 (D.C. Cir.), cert. denied, 488 U.S. 858 (1988); [United States v. Aquino](#), 836 F.2d 1268, 1272 (10th Cir. 1988); [United States v. Howard](#), 828 F.2d 552, 555 (9th Cir. 1987); [United States v. Cresta](#), 825 F.2d 538, 553 (1st Cir. 1987).

- b. **Another Situation in Which “Exigent Circumstances” Have Been Found to Exist Involves the Destruction or Removal of Evidence.** “The law is well-settled that a warrantless entry will be sustained when the circumstances then extant were such as to lead a person of reasonable caution to conclude that evidence of a federal crime would probably be found on the premises and that such evidence would probably be destroyed within the time necessary to obtain a search warrant.” [United States v. Radka](#), 904 F.2d 357, 362 (6th Cir. 1990). See also [United States v. Esparza](#), 162 F.3d 978, 980 (8th Cir. 1998) (“Officers may search without a warrant when faced with certain urgent circumstances, such as the imminent destruction of evidence”); [United States v. Marshall](#), 157 F.3d 477, 482 (7th Cir.), cert. denied, 525 U.S. 1045 (1998) (“Exigent circumstances have been found to exist when ‘the police have an objective and reasonable fear that evidence is about to be destroyed’”(citation omitted); [United States v. Cuaron](#), 700 F.2d 582, 586 (10th Cir. 1983) (“When officers have reason to believe that criminal evidence may be destroyed ... or removed ... before a warrant can be obtained, the circumstances are considered sufficiently critical to permit officers to enter a private residence in order to secure the evidence while a warrant is sought”).

- 1) **The Test for Entries to Prevent the Destruction of Evidence is Objective.** When examining whether a warrantless entry to prevent the destruction of evidence is permissible, “the test is necessarily objective, and the determination of exigent circumstances will vary from case to case, depending upon the ‘inherent necessities of the situation at the time.’” [United States v. Tovar-Rico](#), 61 F.3d 1529, 1535 (11th Cir. 1995). See also [Marshall](#), 157 F.3d at 482 (same).
- 2) **Courts Have Announced Different Requirements Necessary to Justify a Warrantless Entry to Prevent the Destruction of Evidence.** The circuit courts of appeal have announced different requirements that must be met before a warrantless entry to prevent destruction of evidence would be permissible.
- a) **The Sixth, Eighth and D.C. Circuits.** In the Sixth, Eighth, and D.C. Circuit Courts of Appeal, a “warrantless entry to prevent the destruction of evidence ‘is justified if the government demonstrates’ two factors:
- (1) **Third Parties Inside.** First, the government must show a reasonable belief that third parties are inside the dwelling.

- (2) **Loss or Destruction Imminent.** Second, the government must show a reasonable belief that the loss or destruction of evidence is imminent.

[United States v. Gaitan-Acevedo](#), 148 F.3d 577, 585 (6th Cir. 1998) (citation omitted). See also [United States v. Socey](#), 846 F.2d 1439, 1445 (D.C. Cir.), cert. denied, 488 U.S. 858 (1988) (“A police officer can show an objectively reasonable belief that contraband is being, or will be, destroyed within a home if he can show (1) a reasonable belief that third persons are inside a private dwelling and (2) a reasonable belief that these third persons are aware of an investigatory stop or arrest of a confederate outside the premises so that they might see a need to destroy evidence”); [United States v. Munoz](#), 894 F.2d 292, 296 (8th Cir.), cert. denied, 495 U.S. 909 (1990) (“A warrantless search of a residence is justified ... to prevent the destruction of evidence if factual circumstances demonstrate ‘a sufficient basis for an officer to believe somebody in the residence will likely destroy evidence’”)(citation omitted).

- b) **The Tenth Circuit Court of Appeals.** The Tenth Circuit Court of Appeals, however, has announced a four-part test to determine whether the imminent destruction of evidence will justify a warrantless entry. Under the Tenth Circuit’s approach, “[a]n exception to the warrant requirement that allows police fearing the destruction of evidence to enter the home of a suspect should” meet four requirements:

- (1) **Probable Cause.** First, any entry should be made pursuant to clear evidence of probable cause.
- (2) **Serious Crimes Only.** Second, a warrantless entry is available only for serious crimes and in circumstances where the destruction of evidence is likely.
- (3) **Limited in Scope.** Third, the entry must be limited in scope to the minimum intrusion necessary.
- (4) **Clear Exigency.** Finally, the entry must be supported by clearly defined indicators of exigency that are not subject to police manipulation or abuse.

[United States v. Scroger](#), 98 F.3d 1256, 1259 (10th Cir. 1996), cert. denied, 520 U.S. 1149 (1997). Even the Tenth Circuit has recognized, however, that “when officers have reason to believe that criminal evidence may be destroyed or removed before a warrant can be obtained, the circumstances are considered sufficiently critical to permit a warrantless entry.” [Id.](#) at 1260 (citations omitted).

- c. **A Third Situation in Which “Exigent Circumstances” Have Been Found to Exist Involves Crime Scene Emergencies.** “Although the Supreme Court has never provided a complete catalog of the exigencies that satisfy the exception, it has recognized that ‘the need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.’” [Goree](#), 365 F.3d at 1089 (citations omitted). Based on this, “[t]hreats to public safety are widely accepted as one of the exigent circumstances exceptions to the Fourth Amendment’s warrant requirement.” [Rhiger](#), 315 F.3d at 1293. Accordingly, “numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” [Mincey v. Arizona](#), 437 U.S. 385, 392 (1978). See also [United States v. Kempf](#), 400 F.3d 501, 503 (7th Cir. 2005) (“An example of exigent circumstances is when police reasonably fear for their safety or the safety of someone inside the premises”); [Leverington](#), 397 F. 3d at 1117 (“The Fourth Amendment does not require certitude before police may act without a warrant to protect persons or evidence; as we understand the Supreme Court, a showing of probable cause is sufficient”); [Holloway](#), 290 F.3d at 1335-1337. (Noting that “one of the most compelling events giving rise to exigent circumstances is the occurrence of an emergency situation,” and emphasizing that, “although the Fourth Amendment protects the sanctity of the home, its proscription against warrantless searches must give way to the sanctity of human life”).

- 1) **Examples of “Emergency” Situations.** Examples of “emergency” situations in which courts found exigent circumstances to exist include the following:
 - a) **Report of Woman and Child in Danger in Crack House**, [United States v. Hughes](#), 993 F.2d 1313 (7th Cir. 1993);
 - b) **Stabbing Victim**, [United States v. Gillenwaters](#), 890 F.2d 679 (4th Cir. 1989);
 - c) **Explosion in Apartment**, [United States v. Martin](#), 781 F.2d 671 (9th Cir. 1985);
 - d) **Open Access to Controlled Substances by Children**, [Mann v. Cannon](#), 731 F.2d 54 (1st Cir. 1984);
 - e) **Medical Aid to Defendant Shot by Police**, [United States v. Riccio](#), 726 F.2d 638 (10th Cir. 1984); and
 - f) **Reports of Gunshots**, [United States v. Jones](#), 635 F.2d 1357 (8th Cir. 1980).
 - g) **Blood Puddle on Driveway With Trail Leading Into the Home**, [United States v. Janis](#), 387 F.3d 682 (8th Cir. 2004)
 - h) Fistfight inside residence seen by officers from outside screen door... [Brigham City v Stuart](#), 547 U.S. 398 (2006).

- i) *** **Michigan v. Fisher, 2009 U.S. LEXIS 8773 (2009):** Sent to a residence “where a man was “going crazy.’ ... [LEO] found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house. Through a window, the officers could see...Fisher, inside the house, screaming and throwing things. The back door was locked, and a couch had been placed to block the front door. The officers knocked, but Fisher refused to answer. They saw that Fisher had a cut on his hand....” The officers’ warrantless entry to render “emergency aid” was deemed reasonable by the Supreme Court in this per curiam opinion.

Of note, “[p]recedent is clear that the ‘risk of danger’ exigency applies only to situations involving the ‘need to protect or preserve life or avoid serious injury either of police officers themselves or of others.” [United States v. Williams](#), 342 F.3d 430, 438 (6th Cir. 2003) (citation omitted).

NOTE: “Numerous ... circuits have found that probable cause to believe a burglary is in progress constitutes exigent circumstances sufficient to permit warrantless entry.” [In Re Sealed Case 96-3167](#), 96-3167, 153 F.3d 759, 766 (D.C. Cir. 1998). See, e.g., [United States v. Tibolt](#), 72 F.3d 965, 970 (1st Cir. 1995), cert. denied, 518 U.S. 1020 (1996)(Activation of an alarm system supported warrantless entry to check for burglary); [Murdock v. Stout](#), 54 F.3d 1437, 1442 (9th Cir. 1995)(“The officers prudently attempted to make contact with the resident, no doubt to make sure the resident was safe in light of the officers’ concern that a burglary or other crime might have occurred”); [United States v. Johnson](#), 9 F.3d 506, 509 (6th Cir. 1993)(“Several of our sister circuits, however, have upheld warrantless searches conducted during burglary investigations under the rubric of exigent circumstances”); [Reardon v. Wroan](#), 811 F.2d 1025, 1030 (7th Cir. 1987)(Exigent circumstances existed where officers “were faced with a call reporting a burglary in progress during a time of year when the students were on break and burglaries were known to occur more frequently”); [United States v. Dart](#), 747 F.2d 263, 267 (4th Cir. 1984)(Finding exigent circumstances where “warehouse had clearly been burglarized, and [the officer] had reason to believe that the perpetrators were still on the premises”).

- 2) **The Requirements for a Valid Emergency Scene Search Conducted Without a Warrant Include an Exigency and Probable Cause.** “In validating a warrantless search based on the existence of an emergency, as with any other situation falling within the exigent circumstances exception, the Government must demonstrate both exigency and probable cause.” [Holloway](#), 290 F.3d at 1337. More specifically, a valid emergency scene search must usually meet two requirements:
- a) **Emergency Exists.** First, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
 - b) **Probable Cause.** Second, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

As was made clear by the Supreme Court in Brigham City, the subjective motivation of the officers at the emergency scene are irrelevant so long as there is an objectively reasonable basis to believe that both requirements are present. Brigham City, 547 U.S. at 404-405.

NOTE: As with any exigent circumstance, “an officer’s search [under the emergency scene exception] must be limited to only those areas necessary to respond to the perceived emergency.” Martin v. Oceanside, 360 F.3d 1078, 1082 (9th Cir. 2004)(citing Cervantes, 219 F.3d at 890).

- 3) **The Probable Cause Standard is Different in Emergency Scene Searches.** “In the typical case, probable cause exists where the circumstances would lead a reasonable person to believe a search will disclose evidence of a crime. In emergencies, however, law enforcement officers are not motivated by an expectation of seizing evidence of a crime. Rather, the officers are compelled to search by a desire to locate victims and the need to ensure their own safety and that of the public.” Holloway, 290 F.3d at 1337 (internal citation omitted). Accordingly, “probable cause for a forced entry in response to exigent circumstances requires finding a probability that a person is in ‘danger.’” Koch v. Town of Brattleboro, 287 F.3d 162, 169 (2d Cir. 2002); Holloway, 290 F.3d at 1137.
- 4) **Evidence Found in “Plain View” During an Emergency Scene Search May Be Seized.** “The police may seize any evidence that is in plain view during the course of their legitimate emergency activities.” Mincey, 437 U.S. at 393; Michigan v. Tyler, 436 U.S. 499, 509 (1978)(Once inside a building to fight a fire, “firefighters may seize evidence of arson that is in plain view”); Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971)(“Where the initial intrusion that brings the police within plain view of such an article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate”); Cervantes, 219 F.3d at 888 (“The emergency doctrine provides that if a police officer, while investigating within the scope necessary to respond to an emergency, discovers evidence of illegal activity, that evidence is admissible even if there was not probable cause to believe that such evidence would be found”); Janis, 387 F.3d at 688 (Where officers entered pursuant to exigent circumstances and observed three weapons in plain view, seizure was justified under plain view doctrine).
- 5) **There is No “Murder Scene” Exception to the Fourth Amendment.** In three separate cases, the Supreme Court has rejected attempts at creating a blanket “murder scene” exception to the Fourth Amendment. In Mincey v. Arizona, 437 U.S. 385, 394 (1978), the Court declined “to hold that the seriousness of the offense under investigation itself creates exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search.” Later, in Thompson v. Louisiana, 469 U.S. 17, 21 (1984), the Court found a “murder scene” exception “inconsistent with the Fourth and Fourteenth Amendments.” Finally, in Flippo v. West Virginia, 528 U.S. 11, 14 (1999), the Court reiterated their earlier rejections of a “murder scene exception” to the Warrant Clause of the Fourth Amendment.”

U. EPO #21: IDENTIFY THE REQUIREMENTS AND SCOPE OF A SEARCH INCIDENT TO A LAWFUL ARREST

1. **General Rule – Searches Incident to Arrest are an Exception to the Warrant Requirement.** It has long been recognized that a search conducted incident to a lawful custodial arrest “is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.” [United States v. Robinson](#), 414 U.S. 218, 224 (1973). See also [United States v. Jackson](#), 377 F.3d 715, 716 (7th Cir. 2004)(Noting that “a search incident to arrest is automatically valid under the Fourth Amendment”); [United States v. Goddard](#), 312 F.3d 1360, 1364 (11th Cir. 2002), cert. denied, 538 U.S. 969 (2003)(“Since the custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment, a search incident to the arrest requires no additional justification”).
2. **There are Three Distinct Justifications for Permitting Searches Incident to Arrest.** In [Chimel v. California](#), 395 U.S. 752 (1969), the Supreme Court outlined three distinct reasons for permitting searches incident to arrest: (1) to discover weapons; (2) to prevent the destruction or concealment of evidence; and (3) to discover any means of escape. As noted by the Court:

“When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to **remove any weapons that the latter might seek to use in order to resist arrest or effect his escape.** Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize **any evidence on the arrestee’s person in order to prevent its concealment or destruction.**” *Id.* at 762.

See also [Robinson](#), 414 U.S. at 234 (“The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial”); [United States v. Edwards](#), 415 U.S. 800, 802-03 (1974)(Noting exception permitting searches incident to arrest “has traditionally been justified by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained”)(citing [Robinson](#), *supra*).
3. **The Justifications Do Not Need to Be Particular to the Suspect in a Given Case.** “A search incident to arrest is justified by the concern for officer safety and the need to collect evidence of the offense. ... But, the presence of either justification need not be established in a particular case. That is, officers need not have any reason to think the individual is armed or that evidence of the crime will be found on his person. It is the fact of arrest that enables the officer to conduct a search, not a particularized suspicion as to the suspect’s dangerousness.” [United States v. Pratt](#), 355 F.3d 1119, 1121 (8th Cir. 2004)(internal citations omitted). See also [Jackson](#), 377 F.3d at 716 (Noting that “police are entitled to search the persons and possessions of everyone arrested on probable cause, with or without any reason to suspect that the person is armed or carrying contraband”).
4. **There are Two Requirements for a Valid Search Incident to Arrest.** A search incident to arrest may only be conducted when two (2) requirements have been met.

- a. **The First Requirement of a Search Incident to Arrest is That a Custodial Arrest Occur.** First, there must be a lawful custodial arrest for a search incident to arrest to be permissible. At a minimum, this requires that (1) probable cause exist to believe that the arrestee has committed a crime and (2) an arrest is actually made. A search incident to arrest may not be conducted in a situation where an actual arrest does not take place. See [United States v. Robinson](#), 414 U.S. 218, 235 (1973); [Jackson](#), 377 F.3d at 717 (Noting “it is ***custody***, and not a stop itself, that makes a full search reasonable”)(emphasis in original); [McCardle v. Haddad](#), 131 F.3d 43 (2d Cir. 1997)(Search incident to arrest not valid where 10-minute detention in backseat of patrol vehicle did not amount to an arrest).
- 1) **Searches Incident to Arrest May Not Be Conducted in Terry Stop Situations.** For example, a search incident to arrest may not be conducted in a [Terry](#)-type situation, in that “an arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. [Robinson](#), 414 U.S. at 228.
 - 2) **Searches Incident to “Citation” Are Not Permissible.** Illustrative on this point is [Knowles v. Iowa](#), 525 U.S. 113 (1998), where the Supreme Court struck down an Iowa statute that permitted an officer to conduct a “search incident to citation” in those cases where a law enforcement officer had probable cause to arrest a suspect for a traffic violation, but chose, instead, simply to issue a traffic citation. Citing [Robinson](#), *supra*, the Supreme Court noted that the Iowa statute did not implicate the two historical justifications permitting a search incident to arrest, namely, (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. First, a custodial arrest “involves danger to an officer because of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.” [Knowles](#), 525 U.S. at 117; see also [Washington v. Chrisman](#), 455 U.S. 1, 7 (1982)(“Every arrest must be presumed to present a risk of danger to the arresting officer. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger. Moreover, the possibility that an arrested person will attempt to escape if not properly supervised is obvious”)(citations omitted). The same degree of danger noted in [Knowles](#) and [Chrisman](#) is not present when a law enforcement officer is issuing a traffic citation. Second, the likelihood of evidence being destroyed in the type of situation addressed by the Iowa law was minimal. See, e.g., [United States v. Garcia](#), 376 F.3d 648, 650 (7th Cir. 2004)(“Most drivers are given citations and sent on their way. Because the principal justifications for full searches are the need to detect risks to the arresting officers and to preserve evidence that suspects could destroy on the way to the lockup, there is slight warrant for intrusive steps when detention is brief and the drivers (and most evidence) will soon depart”).

- b. **The Second Requirement of a Search Incident to Arrest is That the Search Occur “Contemporaneous” With the Arrest.** The second requirement for a lawful search incident to arrest is that the search must be “substantially contemporaneous” with the arrest. [New York v. Belton](#), 453 U.S. 454 (1981). See also [Stoner v. California](#), 376 U.S. 483, 486 (1964); [Preston v. United States](#), 376 U.S. 364, 367-368 (1964); [United States v. Mitchell](#), 64 F.3d 1105, 1110 (7th Cir. 1995), cert. denied sub nom. [Johnson v. United States](#), 517 U.S. 1158 (1996) (Noting that any search incident to arrest “must be contemporaneous with arrest”). Unfortunately, what exactly is meant by this phrase is open to interpretation. In [United States v. Turner](#), 926 F.2d 883 (9th Cir.), cert. denied, 502 U.S. 830 (1991), the court stated that a search incident to arrest must be conducted “at about the same time as the arrest.” *Id.* at 887. While very general, this comment reiterates the Supreme Court’s mandate that, when a search is too remote in time or place from the arrest, the search cannot be justified as incident to the arrest. [Preston](#), 376 U.S. at 367.

- 1) **Whether a Search was “Substantially Contemporaneous” With the Arrest is Judged Based on the Totality of the Circumstances.** Whether a search was “substantially contemporaneous,” is an issue that must be reviewed in light of the Fourth Amendment’s general reasonableness requirement, taking into consideration all of the circumstances surrounding the search. Thus, while a search conducted 15 minutes after an arrest might be valid in one case, [Curd v. City of Judsonia](#), 141 F.3d 839 (8th Cir.), cert. denied, 525 U.S. 888 (1998) (Warrantless search of purse at police station found to be valid as incident to arrest even though search occurred 15 minutes after the defendant’s arrest at home), a search 30 to 45 minutes after the arrest might be invalid in another. [United States v. Vasey](#), 834 F.2d 782 (9th Cir. 1987) (Warrantless search held not incident to arrest and invalid when the search took place 30 to 45 minutes after the defendant had been arrested, handcuffed, and placed in patrol vehicle). [United States v. Hrasky](#), 453 F.3d 1099 (8th Cir. 2006) (A one hour delay from the time a driver with a suspended license was placed in the police car until the search incident to arrest was upheld where the defendant spent most of that time trying (unsuccessfully) to negotiate his release on the basis of offering to provide information on narcotics activity.)

- 2) **A Variety of Factors are Considered in Determining Whether the Search was “Substantially Contemporaneous” With the Arrest.** Among the factors to be considered in determining whether a search was “contemporaneous” with the arrest are where the search was conducted; when the search was conducted in relation to the arrest; and whether the defendant was present at the scene of the arrest during the search. See, e.g., [United States v. McLaughlin](#), 170 F.3d 889, 892 (9th Cir. 1999)(Held that search of vehicle that took place approximately 5 minutes after the defendant had been arrested and removed from the scene was contemporaneous with the arrest. When analyzing definition of “contemporaneous,” court noted that “some courts have characterized the critical issue as whether the arresting officers conducted the search as soon as it was practical to do so, including whether the officers took intervening actions not directly related to the search”)(citation omitted). In sum, if it can be safely accomplished, the search incident to arrest should be conducted at the scene of the arrest, as soon as possible after the arrest, and before the defendant is removed from the area.
- 3) **In Limited Circumstances, the Search May Take Place Before the Actual Arrest Occurs.** “Where the formal arrest follow[s] quickly on the heels of the ... search of [the defendant’s] person,” the Supreme Court has found that it is not “particularly important that the search preceded the arrest rather than vice versa.” [Rawlings v. Kentucky](#), 448 U.S. 98, 111 (1980). See also [United States v. Goddard](#), 312 F.3d 1360, 1364 (11th Cir. 2002), cert. denied, 538 U.S. 969 (2003); and [United States v. Powell](#), 483 F.3d 836 (police may conduct a search incident to arrest of a suspect whom they have probable cause to arrest if the formal arrest follows quickly on the heels of the challenged search). Indeed, every circuit that has considered the question-save one-has concluded that a search incident to arrest may precede the arrest. See, e.g., [United States v. Bizier](#), 111 F.3d 214, 217 (1st Cir. 1997); [United States v. Currence](#), 446 F.3d 554, 557 (4th Cir. 2006); [United States v. Hernandez](#), 825 F.2d 846, 852 (5th Cir. 1987); [United States v. Montgomery](#), 377 F.3d 582, 588 (6th Cir. 2004); [United States v. Ilazi](#), 730 F.2d 1120, 1126-27 (8th Cir. 1984); [United States v. Banshee](#), 91 F.3d 99, 102 (11th Cir. 1996). Only the Seventh Circuit has held that a *Belton* search may not precede a custodial arrest, but it did so in an opinion that, like the briefs then before it, betrayed no awareness of the Supreme Court’s holding in *Rawlings*. See [Ochana v. Flores](#), 347 F.3d 266, 270 (7th Cir. 2003).

5. **A Search Incident to Arrest May Be Conducted Even After An Arrestee Has Been Handcuffed.** A number of federal courts, although not all, have upheld searches incident to arrest that were conducted after the arrestee was secured in handcuffs. Those courts that have allowed such a search include the Fourth, Seventh, Eighth, Ninth, and D.C. Circuits. See [Mitchell](#), 64 F.3d at 1110 (“We do not believe that Johnson’s handcuffing destroyed Lewellen’s justification for searching the briefcase”); [Nohara](#), 3 F.3d at 1243 (Noting “the officers ... did not make the search unreasonable by handcuffing Nohara, seating him in the hallway, and searching the black bag within two to three minutes of his arrest”); [United States v. Abdul-Saboor](#), 85 F.3d 664, 667-71 (D.C. Cir. 1996)(Upholding search incident to arrest even though arrestee was in handcuffs); [United States v. Silva](#), 745 F.2d 840, 847 (4th Cir. 1984), cert. denied, 470 U.S. 1031 (1985)(Search incident to arrest upheld where the arrestees were handcuffed behind their backs, and as they sat on a motel room bed, an officer searched a locked, zippered bag which contained two firearms and ammunition”); [United States v. Palumbo](#), 735 F.2d 1095, 1097 (8th Cir.), cert. denied, 469 U.S. 934 (1984)(Court rejected appellant’s argument that a search was not incident to his arrest because “the cocaine, hidden behind a dresser drawer, was inaccessible to him because he was handcuffed and in the presence of several officers”); [United States v. Roper](#), 681 F.2d 1354, 1357-59 (11th Cir. 1982), cert. denied sub nom. [Newton v. United States](#), 459 U.S. 1207 (1983) (arrestee handcuffed in hallway of motel and escorted inside room by agents prior to search of briefcase). Alternatively, the Third Circuit Court of Appeals has refused to permit a search incident to arrest of an arrestee who is handcuffed and physically unable to reaccess the lunging area. See [United States v. Myers](#), 308 F.3d 251, 267 (3d Cir. 2002) (Because arrestee was “handcuffed behind his back while lying face down on the floor ...[while] ‘covered’ by two armed police officers” when the search occurred, search of bag impermissible because arrestee would have had to have been “an acrobat or a Houdini” in order to gain access).
6. **The Permissible Scope of a Search Incident to Arrest Varies Depending on the Context. The permissible scope of a search incident to arrest can be described as follows:**
 - a. **A Law Enforcement Officer May Search a Suspect’s Person Incident to Arrest.** When a law enforcement officer makes a custodial arrest of an individual, the officer is entitled to search the suspect’s person. [United States v. Robinson](#), 414 U.S. 218, 235 (1973)(“We hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment”); [Chimel v. California](#), 395 U.S. 752, 762-763 (1969)(“When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape”); [United States v. Pratt](#), 355 F.3d at 1121 (Noting that, “if an officer has arrested the individual, the officer may search the individual’s person incident to that arrest and may reach into his pockets”).

- 1) **Strip and Visual Body Cavity Searches Incident to Arrest.** To be reasonable as part of a search incident to arrest, strip and visual body cavity searches must be justified by at least a reasonable suspicion that the arrestee is concealing contraband or weapons. The manner of the search, including the place in which it is conducted, must also be reasonable. Absent the most compelling circumstances, such as those that pose potentially serious risks to the arresting officer or others in the vicinity, it is unreasonable to conduct a strip search in an area exposed to the general view of persons known to be in the vicinity whether or not any actually viewed the search. Campbell v. Miller, 486 F.3d 949 (7th Cir. 2007).
- 2) **What Degree of Intrusion Qualifies as a “Strip Search?”** “A strip search under federal law includes the exposure of a person's naked body for the purpose of a visual or physical examination.” Amaechi v. West, 237 F.3d 356, 363 (4th Cir. 2001); citing United States v. Vance, 62 F.3d 1152, 1156 (9th Cir. 1995) (treating pulling down a suspect's trousers and underwear in public as a strip search); United States v. Cardenas, 9 F.3d 1139, 1145 (5th Cir. 1993) (noting that directing a suspect to undress amounts to a strip search)). While this definition tells us what kinds of searches are *included* in the term “strip search,” it does not provide an exhaustive list. Notably, federal courts have begun turning to state law to determine the parameters of a strip search. See, e.g., Amaechi, 237 F.3d at 365 (“[B]ecause states define strip search in a uniform fashion . . . we find state law persuasive on our interpretation of what constitutes a strip search.”) Many state statutes contain language such as: “Strip search’ means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person.” 725 ILCS 5/103-1 (emphasis added); see also, Va. Code Ann. 19.2-59.1(A); Colo. Rev. Stat. Ann. § 16-3-405 (West 1998); Conn. Gen. Stat. Ann. § 54-33k (West 1994); Fla. Stat. Ann. § 901.211 (West 1996); Iowa Code Ann. § 702.23 (West 1993); Ohio Rev. Code § 2933.32(A)(2). Based on these state law definitions, which are relied upon heavily by the federal courts, one could argue that even arranging an arrestee’s clothing to permit inspection of part of the underwear is a strip search.

b. **A Law Enforcement Officer May Also Search Incident to an Arrest the Area Within the Arrestee’s “Immediate Control.”** Upon making a custodial arrest, a law enforcement officer is also entitled to search any area within the suspect’s “immediate control.” Chimel v. California, 395 U.S. 752, 763 (1969) (“There is ample justification . . . for a search of the arrestee’s person and the area ‘within his immediate control’ – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence”).

- 1) **Factors to Consider in Determining What is Reasonably An Area Within An Arrestee’s “Immediate Control.”** In deciding what areas are reasonably within an arrestee’s “immediate control,” the following factors should be considered:
 - a) **Distance.** The distance between the arrestee and the place searched.

- b) **Restraints.** Whether the arrestee was handcuffed or otherwise restrained.
- c) **Positioning.** Whether the police were positioned so as to block the arrestee from the area searched.
- d) **Access.** The ease of access to the area itself.
- e) **Numbers.** The number of officers present.

3 W. LaFave, *Search and Seizure* § 6.3(c), at 306-07 (3d ed. 1996). See also [United States v. Tarazon](#), 989 F.2d 1045, 1051 (9th Cir.), cert. denied, 510 U.S. 853 (1993)(Search incident to arrest upheld where “the officials searched the drawers of the desk Tarazon and Serna were sitting behind when they were arrested ... [which] were clearly within Tarazon's and Serna's control at the time they were arrested”).

- 2) **Extending Beyond the Area of Arrestee's “Immediate Control” in a Home.** The doctrine of search incident to arrest does not ordinarily allow the officer to move the arrestee from place to place inside the home, thereby expanding the area of immediate control that is subject to search. Only when the officer can articulate a reasonable necessity to move the subject or open additional containers will it be reasonable to search additional areas.

- a) **A Law Enforcement Officer May Accompany an Arrestee to Other Areas Within the House.** “The rule of [Chimel v. California](#), 395 U.S. 752 (1969), does not permit the arresting officers to lead the accused from place to place and use his presence in each location to justify a search incident to the arrest.” [United States v. Whitten](#), 706 F.2d 1000, 1016 (9th Cir. 1983), cert. denied, 465 U.S. 1100 (1984). However, where it is necessary to move an arrestee into another room in the house from where the arrest occurred to obtain clothing, a law enforcement officer will be justified in accompanying the arrestee. See [Garcia](#), 376 F.3d at 650 (Noting that “police may follow an arrested suspect wherever he goes, even inside a residence”); [Watkins v. United States](#), 564 F.2d 201, 203 (6th Cir. 1977), cert. denied, 435 U.S. 976 (1978)(Where police “accompanied defendant to the bedroom so that he could get a shirt, and ... noticed the butt of a firearm under the mattress of the bed,” weapons was properly seized incident to arrest). If the officer observes evidence in plain view, it may be seized. This is so even if the decision to move the arrestee was made by a law enforcement officer rather than the arrestee. See, e.g., [United States v. Di Stefano](#), 555 F.2d 1094, 1101 (2d Cir. 1977) (Where arrestee was wearing only a nightgown and bathrobe at the time of arrest, “the officers had a duty to find clothing for Sally to wear or to permit her to do so. Having permitted Sally to retire to her bedroom to dress, Officer Christie was clearly justified in accompanying her to maintain a ‘watchful eye’ on her and to assure that she did not destroy evidence or procure a weapon”); [United States v. Titus](#), 445 F.2d 577, 579 (2d Cir.), cert. denied, 404 U.S. 957 (1971)(Where arrestee was nude, officer’s search of bedroom for clothing was reasonable, and evidence of robbery found in the bedroom was admissible, because “they were bound to find some clothing for Titus rather than take him nude to FBI headquarters on a December night, [and] the fatigue jackets were properly seized under the ‘plain view’ doctrine”); [United States v. Butler](#), 980 F.2d 619, 621 (10th Cir. 1992) (“Several courts have indicated that, even without an express invitation as in [Chrisman](#), police may conduct a limited entry into an area for the purpose of protecting the health or safety of an arrestee”)(citations omitted).

- b) **Arrests Outside a Home Will Not Justify a Search Incident to Arrest Inside.** “Ordinarily, the arrest of a person outside of a residence does not justify a warrantless search of the residence itself.” [United States v. DeBuse](#), 289 F.3d 1072, 1075 (8th Cir. 2002)[*citing* [Chimel v. California](#), 395 U.S. 752, 763 (1969)]. See also [Shipley v. California](#), 395 U.S. 818, 820 (1965)(“The Constitution has never been construed by this Court to allow the police, in the absence of an emergency, to arrest a person outside his home and then take him inside for the purpose of conducting a warrantless search. On the contrary, ‘it has always been assumed that one’s house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein’”(citation omitted); [James v. Louisiana](#), 382 U.S. 36, 37 (1965)(Court held that the search of an arrestee’s home following his arrest on the street two blocks away was not “incident to the arrest”); [Agnello v. United States](#), 269 U.S. 20, 32 (1925)(“It has always been assumed that one’s house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein”).
- c) **In Some Situations, a Law Enforcement Officer May Enter a Home Following an Arrest That Occurred Outside.** While the general rule is stated in the preceding paragraph, some circuits have carved out an exception to that rule.

(1) **Entry Allowed to Obtain Clothing or Identification.**

Following the arrest of a person outside a residence, a law enforcement officer may accompany the arrestee "into his residence to obtain clothing or identification." [Debuse](#), 289 F.3d at 1075. See, e.g., [Washington v. Chrisman](#), 455 U.S. 1, 7 (1982)(Where arrestee requested to enter residence to obtain identification, Court found officer acted lawfully in accompanying him into his room for the purpose of obtaining identification. "The officer had a right to remain literally at Overdahl's elbow at all times; nothing in the Fourth Amendment is to the contrary"); [United States v. Gwinn](#), 219 F.3d 326, 333 (4th Cir.), cert. denied, 531 U.S. 1025 (2000)(Where arrestee was wearing only blue jeans at the time of his arrest, trooper's reentry to obtain clothing was lawful because "it was the troopers' duty to look after the reasonable safety requirements of persons in their custody." When the police neither manipulate nor use the situation as a pretext to carry out an otherwise impermissible search, the conduct of the police in deciding to dress the suspect is reasonable. [United States v. Nascimento](#), 491 F.3d 25 (1st Cir. 2007). See also [United States v. Butler](#), 980 F.2d 619, 622 (10th Cir. 1992) (Where arrestee had no shoes and officer observed broken glass on the ground, entry into residence to obtain shoes was permissible, because of "the presence of a legitimate and significant threat to the health and safety of the arrestee," and because "there [was] no evidence in the ... record that the concern for the arrestee's health and safety was pretextual").

(2) **Entry Not Allowed to Obtain Clothing or Identification.**

Alternatively, both the Sixth and Ninth Circuits have rejected this exception to the general rule. See [United States v. Kinney](#), 638 F.2d 941, 945 (6th Cir.), cert. denied, 452 U.S. 918 (1981)(Entry was impermissible where "the defendant did not request permission to secure additional clothing and did not consent to an entry of his home"); [United States v. Whitten](#), 706 F.2d 1000, 1016 (9th Cir. 1983), cert. denied, 465 U.S. 1100 (1984)(Entry unlawful absent "a specific request or consent").

- 3) **Containers That are Within an Arrestee's "Immediate Control" May Be Searched Incident to Arrest.** A law enforcement officer may search a container that is within the arrestee's immediate control at the time of the arrest. This could include, for example, an arrestee's wallet, backpack, briefcase, or luggage. See, e.g., [United States v. Uricoechea-Casallas](#), 946 F.2d 162 (1st Cir. 1991) (Wallet); [United States v. Tavalacci](#), 895 F.2d 1423 (D.C. Cir. 1990)(Locked suitcase); [United States v. Swann](#), 149 F.3d 271, 273 (4th Cir. 1998)(Film canister); [United States v. Ivy](#), 973 F.2d 1184, 1187 (5th Cir. 1992)(Briefcase); [United States v. Richardson](#), 121 F.3d 1051, 1056 (7th Cir. 1997) (Shaving bag); [United States v. Oakley](#), 153 F.3d 696, 698 (8th Cir. 1998)(Backpack).

- 4) **“Immediate Control” is Determined at the Time of Arrest, Not the Time of Search.** The area to be searched incident to a lawful arrest is that area under the arrestee’s immediate control at the time of the arrest, not the time of the search. For example, in [In Re Sealed Case 96-3167](#), 153 F.3d 759 (D.C. Cir. 1998), the defendant was convicted of drugs and weapons charges based upon evidence uncovered during a search incident to arrest of a bedroom. Although the defendant had been arrested in the bedroom, he challenged the legality of the search, claiming that, “although the ... bedroom was the room in which he had been arrested ... he was at the bottom of the stairs by the time the bedroom was searched. By that time, the large bedroom was no longer under his ‘immediate control.’” [Id.](#) at 767 (footnote omitted). The court rejected this argument, finding that “the critical time for analysis is the time of the arrest and not the time of the search.” [Id.](#) Thus, “the area under a defendant’s ‘immediate control’ for [Chimel](#) purposes must be examined as of the time the arrest occurs.” See also [Abdul-Saboor](#), 85 F.3d at 668 (“The determination of immediate control must be made when the arrest occurs”); [United States v. Hudson](#), 100 F.3d 1409, 1419 (9th Cir. 1996)(Search incident to arrest “may be conducted shortly after the arrestee has been removed from the area, provided that (1) the search is restricted to the area that was ‘within the arrestee’s immediate control when he was arrested,’ and (2) events occurring after the arrest but before the search incident to arrest did not render the search unreasonable”)(citations omitted).

- c. *** Vehicles and Searches Incident to Arrest: Basis. [Arizona v. Gant](#) Has Redefined the Basis of Searching a Vehicle Incident to the Arrest of One of the Vehicle’s Occupants. [Arizona v. Gant](#), 129 S. Ct. 1710, 2009 U.S. LEXIS 3120 (2009), rejected the bright-line interpretation of [New York v. Belton](#), 453 U.S. 454 (1981). That interpretation [formerly taught at FLETC by LGD] was that the search of a passenger compartment of a vehicle was an automatic incident of the arrest of one of its occupants. [Gant](#) has: [1] “re-tethered” such searches to [Chimel](#)’s original justification for searches incident to arrest; and [2] added a new basis for such searches borrowed from Justice Scalia’s concurrence in [Thornton](#). Once the basic requirements for a search incident to arrest have been met, [Gant](#) holds: “Police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” Prudent police arrest procedures virtually eliminate the first justification. So far, case law has not fleshed-out the second justification with any precision. Here are some observations that may be helpful for informal classroom discussions until authoritative case-law guidance emerges:

- 1) **The Gant Holding Renews the Importance of Recognizing and Exploiting Other Valid Bases to Search a Vehicle Without a Warrant.** Vehicle frisks, the [Carroll](#) Doctrine, vehicle inventories, consent searches, vehicle inspections and exigent circumstances are unaffected by [Gant](#).

a) ++ **Inevitable Discovery based on Inventory Policy.** U.S. v. Cartwright, 2010 U.S. App. LEXIS 26308 (7th Cir. 2010). Before the Gant decision, a gun was seized from the back seat of a car after the driver was arrested for driving without a license and giving a false name. The car was inventoried before it was towed pursuant to Indianapolis MPD policy. The searching officer testified he was conducting an SIA. The 6th Circuit affirmed the trial court's admission of the gun because it would have been inevitably discovered.

2) **The Phrase "Reasonable to Believe" Is Ill-Defined in the Gant Context.** It is unlikely that the phrase equates to probable cause—probable cause that evidence of any crime is in a vehicle is already covered by Carroll. It is unlikely that the phrase equates to reasonable suspicion—if that had been the majority's meaning, wouldn't they have just said so? It is distinctly possible that the Court meant to be imprecise. Compare the inconsistencies between the Court's two articulations of its holding: "[W]e also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that *evidence* of the offense of arrest *might be found in the vehicle*," with "it is reasonable to believe the *vehicle contains evidence* of the offense of arrest," [emphasis added].

a) ++ **Illustrative Case.** United States v. Grote (9th Cir. 2011 - unpublished and not precedent), 2011 U.S. App. LEXIS 480 (search of car following DUI arrest). "It was reasonable to believe that the car might contain one or more bottles of open liquor or drugs. Because officers had reasonable belief that the car contained evidence relevant to a DUI, they could legally search the entire passenger compartment under Gant."

b) ++ **Two Circuits find "Reasonable to Believe" Roughly Equates to Reasonable Suspicion.** United States v. Vinton, 594 F.3d 14 (D.C. Cir. 2010), cert. denied 2010 U.S. LEXIS 5909 (2010) and United States v. Leak, 2010 U.S. Dist. LEXIS 45564 (4th Cir. 2010), both start with LEO discovering weapons. In Vinton, LEO spot a knife on the car's back seat. In Leak, LEO find a gun in Leak's waistband. In both cases, the weapons led to arrests, and SIAs of the passenger compartments produced further evidence. In sustaining admission of the evidence found in the passenger compartment, Vinton holds that it was reasonable to believe that evidence connected to the illegal weapon would be discovered and that "reasonable to believe" is "probably akin to reasonable suspicion." Leak cites and relies on Vinton.

3) **The Gant Holding Rewards LEO Who Identify and Document All Offenses for which LEO Have Probable Cause to Arrest a Suspect.** The offense resulting from six small bags of drugs found in a driver's pocket following his arrest on a twenty-year-old murder warrant are minor compared to his earlier homicide. But the drug offense would justify a vehicle search more clearly than the homicide.

- 4) **Future Cases May Use Gant's Rationale to Limit Searches Incident to Arrest in Other Contexts Beside Vehicle Searches.** The logic of the Gant majority would seem to preclude returning to search the place of arrest in the arrestee's home once the arrestee is secured and removed.
- d. Vehicles and Searches Incident to Arrest: Scope. The Passenger Compartment of a Vehicle May Be Searched Incident to the Arrest of an Occupant. Chimel established that a search incident to arrest may be conducted on the arrestee's person and those areas "within the immediate control of the arrestee" at the time of the arrest. In Belton, **supra**, the Supreme Court established the following bright-line rule for vehicles: "When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Id. at 460. This "bright-line" rule was redefined by Gant which added additional requirements to justify the search of a vehicle incident to the arrest of one of its occupants. These are discussed above. The Gant majority declined to overrule Belton, however, and left Belton's delineation of the scope of a search of a vehicle incident to the arrest of one of its occupants undisturbed.
- 1) **The Phrase "Passenger Compartment" Has Been Defined Broadly By the Courts.** "Courts have interpreted the 'passenger compartment' requirement broadly in order to effectuate its purpose of protecting police officers and citizens from defendants reaching for a weapon or destroying evidence." United States v. Veras, 51 F.3d 1365, 1371 (7th Cir.), cert. denied, 516 U.S. 999 (1995). Generally speaking, this means that "areas reachable by an occupant without exiting the automobile may be searched incident to arrest, but an area that is outside any occupant's reach or that could be reached only through an elaborate dismantling of the vehicle may not be searched." United States v. Barnes, 374 F.3d 601, 604 (8th Cir. 2004). Of course, "[t]he lawfulness of the search does not depend on whether the occupant was *actually capable* of reaching the area during the course of the police encounter. ... As long as an occupant could have reached an area while inside the vehicle, then the police may search that area incident to a lawful arrest." Id. at 604(emphasis in original). In light of this broad interpretation, courts have upheld searches of the following areas as part of the "passenger compartment" of the vehicle:

- a) **Hatchbacks.** United States v. Mayo, 394 F.3d 1271 (9th Cir. 2005), cert. denied 125 S.Ct 1749 (hatchback is part of the passenger compartment); United States v. Caldwell, 97 F.3d 1063, 1067 (8th Cir. 1996) (“Following appellant’s arrest, the police could lawfully search the passenger compartment of the car, including the hatchback portion of the car”); United States v. Doward, 41 F.3d 789, 794 (1st Cir. 1994), cert. denied, 514 U.S. 1074 (1995) (In finding search of hatchback permissible, court noted that “Belton unmistakably foreclose[d] ... inquiries on actual ‘reachability,’” thus the only question that must be addressed in these situations is whether “the area to be searched is generally reachable without exiting the vehicle, without regard to the likelihood in the particular case that such a reaching was possible”)(internal quotation marks and citation omitted); United States v. Russell, 670 F.2d 323, 327 (D.C. Cir.), cert. denied, 457 U.S. 1108 (1982) (Holding that “a hatchback reachable without exiting the vehicle properly ranks as part of the interior or passenger compartment”); United States v. Rojo-Alvarez, 944 F.2d 959, 970 (1st Cir. 1991) (Court found the search of a hatch area lawful under Belton because the hatch area was “within the defendant’s reach”);
- b) **Interior of a Van.** United States v. Green, 178 F.3d 1099 (10th Cir. 1999) (entire interior of van is part of passenger compartment); United States v. Lacey, 86 F.3d 956 (10th Cir.), cert. denied, 519 U.S. 944 (1996) (same); United States v. Green, 178 F.3d 1099 (10th Cir. 1999) (same);
- c) **Cargo Area of an SUV or Station Wagon.** United States v. Olguin-Rivera, 168 F.3d 1203, 1204 (10th Cir. 1999). (Holding that “officers may search the entire passenger compartment, including the interior cargo or luggage area, of sport-utility vehicles or similarly configured automobiles, whether covered or uncovered,” and basing its finding in part on the fact that “trunks are inaccessible from the passenger compartment, whereas the cargo area in the vehicle in this case, whether covered or not, [was] still accessible to the vehicle’s occupants”); see also United States v. Pino, 855 F.2d 357 (6th Cir. 1988) (cargo area of a station wagon is part of passenger compartment); and United States v. Henning, 906 F.2d 1392 (10th Cir. 1990), cert. denied, 498 U.S. 1069 (1991), a full search of the interior of a Chevrolet Suburban was found to be Constitutional under Belton. According to the court, “where ... the vehicle contains no trunk, the entire inside of the vehicle constitutes the passenger compartment and may be lawfully searched.” Id. at 1396.
- d) **Trunk Accessible by Fold Down Seats or Armrest.** United States v. Arnold, 388 F.3d 237 (7th Cir. 2004) (back seat armrest access to trunk made trunk accessible as part of passenger compartment);

- e) **Space Behind a Radio or Heating Vent in a Dashboard**, [United States v. Willis](#), 37 F.3d 313, 316 (7th Cir. 1994); [United States v. Patrick](#), 3 F. Supp. 2d 95, 99 (D. Mass 1998);
 - f) **Secret Compartment in the Backseat of the Vehicle**, [Veras](#), 51 F.3d at 1372; [United States v. Poggemiller](#), 375 F.3d 686, 688 (8th Cir. 2004);
 - g) **Inside Bicycle Handlebars**, [United States v. Currence](#), 446 F. 3d 554 (4th Cir. 2006).
- e. **Containers Located in a Vehicle May Be Searched Incident to the Arrest of an Occupant.** In [Belton](#), the Supreme Court additionally held that “the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.” [Belton](#), 453 U.S. at 460 (citation and footnote omitted).
- 1) **The Definition of a “Container.”** A “container” was defined as “any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like.” [Belton](#), 453 U.S. at 461 n.4.
 - 2) **Based on Case Law, a Locked Container in a Vehicle Can Probably Be Searched Incident to the Arrest of an Occupant.** While this definition does not expressly address “locked” containers, several subsequent federal cases can be interpreted as including locked containers within the scope of a lawful search incident to arrest. See [Knowles](#), 525 U.S. at 118 (Law enforcement officers may “even conduct a full search of the passenger compartment, including *any* containers therein, pursuant to a custodial arrest”)(emphasis added); [United States v. Tavalacci](#), 895 F.2d 1423, 1428 (D.C. Cir. 1990)(locked bag); [United States v. Gonzalez](#), 71 F.3d 819, 825-26 (11th Cir. 1996)([Belton](#) rule allowed searches of glove boxes, locked or unlocked); [United States v. Valiant](#), 873 F.2d 205, 206 (8th Cir. 1989)(locked briefcase was closed container within the vehicle that could be lawfully searched incident to arrest); [United States v. Woody](#), 55 F.3d 1257, 1269-70 (7th Cir. 1995)(search of locked glove box reasonable during search incident to arrest). Further, two of the Justices who disagreed with the majority’s decision in [Belton](#) seemed to concede that locked containers fall within the parameters outlined in that case. [Belton](#), 453 U.S. at 469 (Brennan, J., dissenting)(Noting that result in [Belton](#) would have been the same even if “search had extended to locked luggage or other inaccessible containers located in the back seat of the car”); *Id.* at 453 U.S. 472 (White, J., dissenting)([Belton](#) rule allows “interior of the car and any container found therein, whether locked or not” to be searched incident to lawful arrest).

- f. **The Trunk of a Vehicle May Not Be Searched Incident to the Arrest of an Occupant.** The trunk of a vehicle, however, is not within the immediate control of an arrestee and cannot be searched during a search incident to arrest. [Belton](#), 453 U.S. at 461 n.4 (“Our holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk”). See also [United States v. Thompson](#), 906 F.2d 1292, 1298 (8th Cir.), cert. denied, 498 U.S. 989 (1990); [United States v. Hernandez](#), 901 F.2d 1217, 1220 (5th Cir. 1990); [United States v. Schecter](#), 717 F.2d 864, 868 (3rd Cir. 1983); [United States v. Freire](#), 710 F.2d 1515, 1521 (11th Cir. 1983), cert. denied, 465 U.S. 1023 (1984); [United States v. Wright](#), 932 F.2d 868, 878 (10th Cir. 1991). *** This may not remain the case under [Gant](#) if the search is justified on the basis that it is reasonable to believe that evidence of the crime of arrest could be in the trunk. No case law to date, however, supports this extension of such searches to the trunk of a vehicle.
- g. **When a Recent Occupant of a Vehicle is Arrested, Police May Typically Search the Vehicle Incident to Arrest.**
- 1) In [Thornton v. United States](#), 541 U.S. 615 (2004), the Supreme Court addressed whether the rule of [Belton](#), discussed above, “is limited to situations where the officer makes contact with the occupant while the occupant is inside the vehicle, or whether it applies as well when the officer first makes contact with the arrestee after the latter has stepped out of his vehicle.” [Id.](#) at 619. In finding “no basis to conclude that the span of the area generally within the arrestee’s immediate control is determined by whether the arrestee exited the vehicle at the officer’s direction, or whether the officer initiated contact with him while he remained in the car,” [id.](#) at 620-21, the Court noted that, “[i]n all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle.” [Id.](#) at 621. Further, “[i]n either case, the officer faces a highly volatile situation,” [id.](#), and, stated the Court, it “would make little sense to apply two different rules to what is, at bottom, the same situation.” [Id.](#) In fact, the Court suggested that “[i]n some circumstances it may be safer and more effective for officers to conceal their presence from a suspect until he has left his vehicle.” [Id.](#)
 - 2) For those reasons, the Court held that “[s]o long as an arrestee is ... [a] ‘recent occupant’ of a vehicle ... officers may search that vehicle incident to the arrest.” [Id.](#) at 623-24. See also [United States v. Herndon](#), 393 F.3d 665, 668 (6th Cir. 2005) (Search of truck permissible under Thornton “recent occupant” theory because “when the police approached Herndon, the door of his truck was still open and he was standing only a few feet away.”).

V. EPO #22: IDENTIFY CIRCUMSTANCES WHERE A SUSPECT'S CONSENT TO SEARCH IS VOLUNTARY

1. **General Rule – Consent Searches are an Exception to the Warrant Requirement.**
“It is ... well-settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” [Schneckloth v. Bustamonte](#), 412 U.S. 218, 219 (1973)(citation omitted). See also [United States v. Rodriguez](#), 367 F.3d 1019, 1027 (8th Cir. 2004)(“The Fourth Amendment’s general prohibition against warrantless searches does not apply when officers obtain a voluntary consent from the person whose property is searched or from a third party with common authority over the property”)(citation omitted); [United States v. Ringold](#), 335 F.3d 1168, 1174 (10th Cir.), cert. denied, 540 U.S. 1026 (2003)(“It has long been established that an officer may conduct a warrantless search consistent with the Fourth Amendment if the challenging party has previously given his or her voluntary consent to that search”).
2. **Neither Probable Cause Nor Reasonable Suspicion is Required for a Consent Search.** When a law enforcement officer obtains valid consent to search a given area or object, neither reasonable suspicion, nor probable cause, is required. Thus, “in situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by valid consent may be the only means of obtaining important and reliable evidence.” [Schneckloth](#), 412 U.S. at 227. See also [United States v. Del Rosario](#), 388 F.3d 1, 13 (1st Cir. 2004) (“At the risk of belaboring the obvious, a supportable finding of consent eliminates the need for either a search warrant or probable cause”).
3. **Consent Searches Have Two Requirements.** Generally speaking, there are two (2) requirements for a consent search to be valid.
 - a. **Voluntary.** First, the consent to search must be voluntarily given. See, e.g., [United States v. Bernitt](#), 392 F.3d 873, 876 (7th Cir. 2004)(citation omitted)(noting that, “the consent to a police search must be voluntary”).
 - b. **Actual or Apparent Authority.** Second, the consent must be given by an individual with either actual or apparent authority over the place to be searched. **This second requirement will be discussed in detail in EPO # 23.**
4. **The First Element of a Valid Consent Search is That the Consent Be Given Voluntarily.** Both “the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force.” [Schneckloth](#), 412 U.S. at 228. To say that consent was given “voluntarily” means the consent “was not the product of duress or coercion, express or implied” [Bernitt](#), 392 F.3d at 876 (citation omitted). In making this determination, courts will look at the “totality of the circumstances” surrounding the giving of the consent, because “it is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced.” [Id.](#) at 233.
 - a. **Courts Consider Numerous Factors in Deciding Whether Consent was Voluntarily Given.** Factors to consider in making a voluntariness determination include, but are not limited to:

- 1) **The Age, Education, and Intelligence of the Individual**, Id. at 226; United States v. Asibor, 109 F.3d 1023, 1038 n.14 (5th Cir.), cert. denied, 522 U.S. 902 (1997); United States v. Smith, 260 F.3d 922, 924 (8th Cir. 2001); United States v. Givan, 320 F.3d 452, 459 (3d Cir. 2003)(Noting “the critical factors comprising a totality of the circumstances inquiry ... include[e] ... the age, intelligence, and educational background of the consenting individual”); United States v. Ivy, 165 F.3d 397, 402 (6th Cir. 1998); United States v. Lattimore, 87 F.3d 647, 650 (4th Cir. 1996); United States v. Taylor, 196 F.3d 854, 860 (7th Cir. 1999), cert. denied, 529 U.S. 1081 (2000); United States v. Blake, 888 F.2d 795, 798 (11th Cir. 1989).
- 2) **The Individual’s Knowledge of His or Her Right to Refuse to Give Consent**, Schneckloth, 412 U.S. at 227 (“While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the *sine qua non* of an effective consent”)(emphasis in original); United States v. Watson, 423 U.S. 411, 424 (1976)(Noting “the absence of proof that [the suspect] knew he could withhold his consent, though it may be a factor in the overall judgment, is not to be given controlling significance”); Asibor, 109 F.3d at 1038 n.14; United States v. Perez, 72 Fed. Appx. 857, 859 (2d Cir. 2003) (unpublished) (Noting that, “although the knowledge of the right to refuse consent may be a factor in considering whether consent is voluntary ... failure to inform a suspect of his rights does not automatically render a consent involuntary”); United States v. Jones, 286 F.3d 1146, 1152 (9th Cir. 2002); Ivy, 165 F.3d at 402; Blake, 888 F.2d at 798.
- 3) **The Length of the Detention**, Schneckloth, 412 U.S. at 226; Smith, 260 F.3d at 924 (Factors to consider include “the length of time [the suspect] was detained”); Hubbard v. Haley, 317 F.3d 1245, 1253 (11th Cir. 2003); Ivy, 165 F.3d at 402; Lattimore, 87 F.3d at 650; Taylor, 196 F.3d at 860.
- 4) **The Repeated and Prolonged Nature of the Questioning**, Schneckloth, 412 U.S. at 226; Hubbard, 317 F.3d at 1253.
- 5) **Whether the Consent was Given in Writing**, Navarro, 90 F.3d at 1257; United States v. Boone, 245 F.3d 352, 362 (4th Cir.), cert. denied, 532 U.S. 1031 (2001)(“Written consent supports a finding that the consent was voluntary”).
- 6) **The Use of Physical Punishment, Such as Deprivation of Food or Sleep**, Schneckloth, 412 U.S. at 226; Watson, 423 U.S. at 424 (Consent upheld because, *inter alia*, “[t]here was no overt act or threat of force against [the suspect] proved or claimed”); Smith, 260 F.3d at 924 (Factors to consider include “whether the police threatened, physically intimidated, or punished [the suspect]”); Hubbard, 317 F.3d at 1253; Ivy, 165 F.3d at 402.

- 7) **Whether the Individual Cooperated in the Search**, [United States v. Carrate](#), 122 F.3d 666, 670 (8th Cir. 1997)(Suspect “idly stood by while the troopers searched his car, never indicating that he objected to the search”) and [United States v. McSween](#), 53 F.3d 684, 688 (5th Cir.), cert. denied, 516 U.S. 874 (1995)(Defendant voluntarily consented to search where he assisted officers through removal of paneling in hatchback); [Givan](#), 320 F.3d at 459 (Noting “the critical factors comprising a totality of the circumstances inquiry ... include[e] ... the parties’ verbal and non-verbal actions ...”); [Blake](#), 888 F.2d at 798.
- 8) **Whether the Suspect was in Custody at the Time the Consent was Given**, [Watson](#), 423 U.S. at 424 (While noting that custody is a factor to be considered, Court emphasized that “the fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search”); see also [United States v. Renken](#), 474 F.3d 984 (7th Cir. 2007) (consent to search can be voluntarily given even when a defendant is in custody without having received Miranda warnings. Custody alone has never been enough in itself to demonstrate a coerced confession or consent to search); [Smith](#), 260 F.3d at 924 (One factor to consider was “whether [the suspect] was in custody or under arrest when the consent was given”); [Asibor](#), 109 F.3d at 1038 n.14; [Jones](#), 286 F.3d at 1152; [Taylor](#), 196 F.3d at 860; [Blake](#), 888 F.2d at 798.

NOTE: It should be remembered that “[c]onsent given during an illegal detention is presumptively invalid.” [United States v. Cellitti](#), 387 F.3d 618, 622 (7th Cir. 2004). However, “the consent may nevertheless be valid provided that it is sufficiently attenuated from the illegal police action to dissipate the taint.” Id. at *10.

- 9) **The Suspect’s Belief That No Incriminating Evidence Will Be Found**, [Asibor](#), 109 F.3d at 1038 n.14; [Blake](#), 888 F.2d at 798.
- 10) **The Presence of Coercive Police Procedures, Such as Displaying Weapons or Using Force**, [Orhorhaghe v. Immigration and Naturalization Service](#), 38 F.3d 488, 500 (9th Cir. 1994); [Asibor](#), 109 F.3d at 1038 n.14.; [Taylor](#), 196 F.3d at 860; [Blake](#), 888 F.2d at 798.
- 11) **The Suspect’s Experience in Dealing With Law Enforcement Officers**, [Watson](#), 423 U.S. at 424-25 (Consent upheld in part because “[t]here [was] no indication in this record that [the suspect] was a newcomer to the law”); [Smith](#), 260 F.3d at 924 (Factors to consider include “whether [the suspect] had experienced prior arrests and was thus aware of the protections that the legal system affords to suspected criminals”); [Lattimore](#), 87 F.3d at 650; [United States v. Barnett](#), 989 F.2d 546, 556 (1st Cir. 1993)(defendant had eighteen prior arrests).
- 12) **Whether the Suspect was Under the Influence of Any Drugs or Alcohol**, [Smith](#), 260 F.3d at 924.
- 13) **Whether the Suspect was Notified of his Miranda Rights**, [Watson](#), 423 U.S. at 425; [Smith](#), 260 F.3d at 924; [Jones](#), 286 F.3d at 1152; [Taylor](#), 196 F.3d at 860.

- 14) **Whether the Police Made Promises or Misrepresentations**, [Watson](#), 423 U.S. at 424 (Suspect's consent upheld because, *inter alia*, "[t]here were no promises made to him and no indication of more subtle forms of coercion that might flaw his judgment"); [Smith](#), 260 F.3d at 924; [Hubbard](#), 317 F.3d at 1253; [Ivy](#), 165 F.3d at 402; [Hadley v. Williams](#), 368 F.3d 747, 749 (7th Cir. 2004)(In finding consent obtained based upon a lie regarding the existence of an arrest warrant, court noted that, "[a]lthough 'the law permits the police to pressure and cajole, conceal material facts, and actively mislead,' it draws the line at outright fraud").
- 15) **The Location Where the Consent was Given**, [Watson](#), 423 U.S. at 424 (Suspect's consent found valid in part because "consent was given while on a public street, not in the confines of the police station"); [Smith](#), 260 F.3d at 924. (Factors to consider include "whether the consent occurred in a public or a secluded place"); [Givan](#), 320 F.3d at 459 (Noting "the critical factors comprising a totality of the circumstances inquiry ... include[e] ing the setting in which the consent was obtained ..."); [Lattimore](#), 87 F.3d at 650.
- 16) **Whether the Defendant Had Been Told a Search Warrant Could Be Obtained**, [Jones](#), 286 F.3d at 1152. In such situations, application of this factor "hinges on whether a suspect is informed about the possibility of a search warrant in a threatening manner." [United States v. Soriano](#), 346 F.3d 963, 971 (9th Cir. 2003)[*citing* [United States v. Cormier](#), 220 F.3d 1103, 1112 (9th Cir. 2000), cert. denied, 531 U.S. 1174 (2001)]. However, "when probable cause to justify a warrant exists, the weight of [this] ... factor is significantly diminished." [Soriano](#), 346 F.3d at 971.
- 17) **Whether There Were Repeated Requests for Consent**, [Taylor](#), 196 F.3d at 860. *But see* [United States v. Jones](#), 254 F.3d 692, 696 (8th Cir. 2001)(Noting "there is certainly no legal rule that asking more than once for permission to search renders a suspect's consent involuntary, particularly where the suspect's initial response is ambiguous").

- b. **Acquiescence to Law Enforcement Will Result in Consent Being Found Involuntary**. "There can be no effective consent to a search or seizure if that consent follows a law enforcement officer's assertion of an independent right to engage in such conduct." [Orhorhaghe v. Immigration and Naturalization Service](#), 38 F.3d 488, 500 (9th Cir. 1994); *see also* [Bumper v. North Carolina](#), 391 U.S. 543 (1968). For example, when an individual gives consent for a search only after a law enforcement officer asserts that he or she has a warrant, the consent is not truly being given voluntarily, in that the officer is "announcing in effect that the [individual] has no right to resist the search." [Bumper](#), 391 U.S. at 550. In [Orhorhaghe](#), the court found the suspect's consent had not been voluntarily given because, among other things, a law enforcement officer had informed him "he (the officer) didn't need a warrant." This statement on the part of the law enforcement officer "constituted ... an implied claim of a right to conduct the search." *Id.* at 501. *See also* [United States v. Cedano-Medina](#), 366 F.3d 682, 684 (8th Cir. 2004)(Burden of proving consent is on government, and such burden "is not satisfied by showing a mere submission to a claim of lawful authority") [*quoting* [United States v. \\$ 404,905.00](#), 182 F.3d 643, 649 n.3 (8th Cir. 1999)].

- c. **The Burden of Proving Consent was Voluntarily Given Rests With the Government.** The burden of proving that the consent was voluntarily given rests with the prosecutor, and “cannot be discharged by showing no more than acquiescence to a claim of lawful authority.” [Bumper](#), 391 U.S. at 550.
5. **Consent May Be Inferred From a Defendant’s Words or Actions.** Consent may be expressly sought from and given by a defendant. However, consent may also be inferred from a defendant’s words or actions, so long as they are sufficiently comprehensible to a reasonable officer. [United States v. Hylton](#), 349 F.3d 781, 786 (4th Cir. 2003); [United States v. Guerrero](#), 472 F.3d 784 (10th Cir. 2007) (a defendant’s consent must be clear, but it need not be verbal). See also [Jones](#), 254 F.3d at 695 (“Consent can be inferred from words, gestures, and other conduct”); [United States v. Carter](#), 378 F.3d 584, 587 (6th Cir. 2004)(Same); [United States v. Wesela](#), 223 F.3d 656, 661 (7th Cir. 2000), cert. denied, 531 U.S. 1174 (2001)(“The fact that there was no direct verbal exchange between [the officer and the third party] in which [the third party] explicitly said ‘it’s o.k. with me for you to search the apartment,’ is immaterial, as the events indicate her implicit consent”); [United States v. Buettner-Janusch](#), 646 F.2d 759, 764 (2d Cir.), cert. denied, 454 U.S. 830 (1981) (“Moreover, it is well settled that consent may be inferred from an individual’s words, gestures, or conduct”).

NOTE: An example of how an individual’s consent may be inferred from their gestures or conduct is presented in [United States v. Carter](#), 378 F.3d 584 (6th Cir. 2004). Here, uniformed police officers knocked on a defendant’s hotel room door. When the defendant answered the door, the officers asked for permission to enter. At that point, the defendant “stepped back and cleared a path for the officers to enter.” [Id.](#) at 587. According to the court, “[a]ny ordinary caller, under like circumstances, would understand assent to have been given, and the police are not held to a higher standard in this regard than an ordinary person.” [Id.](#) at 588. See also [Robbins v. MacKenzie](#), 364 F.2d 45, 49 (1st Cir.), cert. denied, 385 U.S. 913 (1966)(“An ordinary person who knocks on a door and receives assent may properly consider himself an invited guest Similarly, the Fourth Amendment ... does not require [a police officer] to be clairvoyant”).

6. **Miranda Rights Are Not Required Before Seeking Consent.** If a suspect is under arrest, there is no requirement that law enforcement officers notify the individual of his or her [Miranda](#) rights prior to requesting consent, even if the individual has previously invoked his right to silence or right to counsel. “A consent to search is not the type of incriminating statement toward which the Fifth Amendment is directed. It is not in itself ‘evidence of a testimonial or communicative nature.’” [United States v. Lemon](#), 550 F.2d 467, 472 (9th Cir. 1977). See also [United States v. Lee](#), 356 F.3d 831, 834 (8th Cir. 2003)(“[Miranda](#) warnings, however, are not required for consent to a search to be voluntary, although they can lessen the probability that a defendant was subtly coerced”); [United States v. McClellan](#), 165 F.3d 535, 544 (7th Cir.), cert. denied, 526 U.S. 1125 (1999)(Noting that “consent to search is not an interrogation within the meaning of [Miranda](#),” so warnings not required before seeking consent even after suspect had previously invoked his right to counsel); [United States v. Knight](#), 58 F.3d 393, 397 (8th Cir. 1995), cert. denied, 516 U.S. 1099 (1996)(Holding “the Fifth Amendment’s protection against self-incriminating statements may limit further interrogation once a person in custody invokes his right to counsel, but there is no similar prohibition on securing a voluntary consent to search for physical evidence”); [Cody v. Solem](#), 755 F.2d 1323, 1330 (8th Cir.), cert. denied, 474 U.S. 833 (1985) (“Simply put, a consent to search is not an incriminating statement”); [Smith v. Wainwright](#), 581 F.2d 1149, 1152 (5th Cir. 1978)(“A consent to search is not a self-incriminating statement”); [United States v. Faruolo](#), 506 F.2d 490, 495 (2d Cir. 1974)(“There is no possible violation of Fifth Amendment rights since consent to search is not ‘evidence of a testimonial or communicative nature.’”). But see [United States v. Fleming](#), 31 F. Supp. 2d 3, 5 (D.D.C. 1998)(Holding consent to search invalid since it was given after suspect invoked his right to counsel)

W. EPO #23: IDENTIFY THE CIRCUMSTANCES IN WHICH A THIRD PARTY HAS THE ACTUAL OR APPARENT AUTHORITY TO GRANT CONSENT TO SEARCH A SUSPECT'S PROPERTY

1. **The Second Requirement of a Valid Consent Search is That the Consent Be Given By Someone With Actual or Apparent Authority.** The second requirement for a consent search is that the consent must be given by an individual with either actual or apparent authority over the place to be searched. See, e.g., [Kimoana](#), 383 F.3d at 1221 (“A third party’s consent to search is valid if that person has either the ‘actual authority’ or the ‘apparent authority’ to consent to a search of that property”); [United States v. James](#), 353 F.3d 606, 613 (8th Cir. 2003)(“Consent to search ... may be given either by the suspect or by some other person who has common authority over, or sufficient relationship to, the item to be searched”).
- a. **An Individual Who Actually Owns or Controls An Item Has “Actual” Authority to Consent to a Search.** “Actual” authority may be obtained “from the individual whose property is searched.” [Illinois v. Rodriguez](#), 497 U.S. 177, 181 (1990)(citation omitted).

- b. **An Third Party Who Has Common Authority Over an Item or Area May Consent to a Search.** Additionally, consent to search may be given by a third party “who possesses common authority over or other sufficient relationship to the ... effects sought to be inspected.” [United States v. Matlock](#), 415 U.S. 164, 171 (1974). “[A] third party has authority to consent to a search of a home when that person (1) has access to the area searched and (2) has either (a) common authority over the area, (b) a substantial interest in the area, or (c) permission to gain access to the area. [Moore v. Andreno](#), 505 F.3d 203, 208-09 (2nd Cir. 2007).

As noted by the Supreme Court in [Matlock](#):

“Common authority is, of course, not to be implied from the mere property interest a third-party has in the property. The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements ..., but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.” [Id.](#) at 172 n.7.

Indicators of common authority include “(1) possession of a key to the premises; (2) a person’s admission that she lives at the residence in question; (3) possession of a driver’s license listing the residence as the driver’s legal address; (4) receiving mail and bills at that residence; (5) keeping clothing at the residence; (6) having one’s children reside at that address; (7) keeping personal belongings such as a diary or pet at that residence; (8) performing household chores at that residence; (9) being on the lease for the premises and/or paying rent; and (10) being allowed into the resident when the owner is not present.” [United States v. Groves](#), 470 F.3d 311, 319 (7th Cir. 2006) (internal citations omitted). See also [James](#), 353 F.3d at 613 (“Common authority is a function of mutual use, joint access, and control ...”); [Kimoana](#), 383 F.3d at 1222 (Third party consent to search motel room upheld where, “[a]lthough Defendant was not the registered guest who had paid for the room, he had stayed there overnight, left his possessions there, and carried a key to the room”); [United States v. Davis](#), 332 F.3d 1163, 1169 (9th Cir. 2003) (“A third party has actual authority to consent to a search of a container if the owner of the container has expressly authorized the third party to give consent or if the third party has mutual use of the container and joint access to or control over the container”); [United States v. Rith](#), 164 F.3d 1323, 1329 (10th Cir.), cert. denied, 528 U.S. 827 (1999) (Noting “a third party has authority to consent to a search of property if that third party has either (1) mutual use of the property by virtue of joint access, or (2) control for most purposes over it”); [United States v. Aghedo](#), 159 F.3d 308, 310 (7th Cir. 1998) (“Common authority is based upon mutual use of property by persons generally having joint access or control”).

- c. **An Individual Whom the Police Reasonably, Albeit Mistakenly, Believe Has Authority to Consent May Have “Apparent” Authority.** Consent may also be obtained from an individual who has “apparent” authority over the place or item to be searched. This typically occurs when law enforcement officers conduct a warrantless search of an object based upon the consent of a third-party whom the officers, at the time of the search, reasonably, albeit erroneously, believed possessed common authority over the object. [Rodriguez](#), 497 U.S. at 186. If the officers’ belief is “reasonable,” considering all of the facts available to them at the time the search is conducted, the search will still be valid. See also [Cedano-Medina](#), 366 F.3d at 684-85 (Noting “a person can render a search legal by behaving in a way that could cause a reasonable person to believe that he or she has knowingly and voluntarily consented, whether or not the person actually intends to consent”); [United States v. Sanchez](#), 156 F.3d 875, 878 (8th Cir. 1998)(“Finally, whether or not the suspect has actually consented to a search, the Fourth Amendment requires only that the police reasonably believe the search to be consensual”); [United States v. Jenkins](#), 92 F.3d 430, 436 (6th Cir. 1996), cert. denied, 520 U.S. 1170 (1997)(“When one person consents to a search of the property owned by another, the consent is valid if ‘the facts available to the officer at the moment ... warrant a man of reasonable caution in the belief that the consenting party had authority over the premises’”)(citation omitted); [United States v. Elliott](#), 50 F.3d 180, 187 (2d Cir. 1995), cert. denied, 516 U.S. 1050 (1996); [United States v. Saadeh](#), 61 F.3d 510, 517-518 (7th Cir.), cert. denied, 516 U.S. 990 (1995).
- d. **Property Ownership is Not Dispositive in Determining Who Has Consent to Search.** As note above, the Supreme Court has “expressly downplayed the significance of property ownership when deciding whether a third party possessed common authority to consent.” [United States v. Shelton](#), 337 F.3d 529, 532 n.11 (5th Cir. 2003).
2. **The Scope of a Consent Search is Generally Defined by the Consent Given.** “Warrantless searches may not exceed the scope of the consent given.” [United States v. Marshall](#), 348 F.3d 281, 286 (1st Cir. 2003). “The scope of a search is generally defined by its expressed object.” [Florida v. Jimeno](#), 500 U.S. 248, 251 (1991)[*citing United States v. Ross*, 456 U.S. 798 (1982)]. “The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?” [Jimeno](#), 500 U.S. at 251(citations omitted). In answering this questions, courts “look beyond the language of the consent itself, to the overall context, which necessarily encompasses contemporaneous police statements and actions.” [United States v. Melendez](#), 301 F.3d 27, 32 (1st Cir. 2002)(citation omitted). See, e.g., [Hadley](#), 368 F.3d at 750 (“The fact that a person answers a knock at the door doesn’t mean that he agrees to let the person who knocked enter,” nor does telling someone to “answer the door” “necessarily mean that you’re telling him to let the person in”)[*citing Sparing v. Village of Olympia Fields*, 266 F.3d 684, 688-90 (7th Cir. 2001); [United States v. Berkowitz](#), 927 F.2d 1376, 1387 (7th Cir.), cert. denied, 502 U.S. 845 (1991); [United States v. McCraw](#), 920 F.2d 224, 229-30 (4th Cir. 1990)].

NOTE: In situations involving requests to search vehicles, “[a] general grant of permission to search an automobile typically extends to the entire car, absent an objection or an explicit limitation by the grantee.” [United States v. Rosborough](#), 366 F.3d 1145, 1150 (10th Cir. 2004). See also [United States v. Zapata](#), 180 F.3d 1237, 1243 (11th Cir. 1999) (“A general consent to search for specific items includes consent to search any compartment or container that might reasonably contain those items”); [United States v. Ferrer-Montoya](#), 483 F.3d 565 (8th Cir. 2007) (same).

- a. **An Individual May Limit the Scope of Any Consent Given.** An individual may limit the scope of any consent. [Jimeno](#), 500 U.S. at 252 (“A suspect may of course delimit as he chooses the scope of the search to which he consents”). See also [Walter v. United States](#), 447 U.S. 649, 656 (1980)(plurality opinion)(“When an official search is properly authorized – whether by consent or by issuance of a valid warrant – the scope of the search is limited by the terms of its authorization”); [Marshall](#), 348 F.3d at 287 (“For sure, a consenting party may limit the scope of his or her consent or withdraw it altogether”); [United States v. Jones](#), 356 F.3d 529, 534 (4th Cir. 2004)(“The suspect may impose limits on the items or areas subject to the consent search, just as he may refuse to allow any search whatsoever in the absence of a warrant”). Should a law enforcement officer fail to comply with the limitations placed on the consent, “the search is impermissible.” [United States v. Strickland](#), 902 F.2d 937, 941 (11th Cir. 1990).
- b. **An Individual May Revoke Any Consent Given.** An individual may also revoke his or her consent. When consent is revoked, a law enforcement officer is required to cease searching, unless another exception to the Fourth Amendment’s warrant requirement (e.g., probable cause to search a vehicle) is present. See [United States v. Fuentes](#), 105 F.3d 487, 489 (9th Cir. 1997) (Suspect effectively revoked consent by shouting “No, wait” before officer could pull cocaine out of pocket); [United States v. Martel-Martinez](#), 988 F.2d 855, 858 (8th Cir. 1993) (“Though consent may be withdrawn, Martel-Martinez’s passive conduct fell far short of the ‘unequivocal act or statement of withdrawal’ required”). In fact, an individual’s failure to limit the scope of a search may defeat a later claim that the search exceeded the scope of the consent given. See generally [United States v. Gordon](#), 173 F.3d 761, 766 (10th Cir.), *cert. denied*, 528 U.S. 886 (1999)(“We consistently and repeatedly have held a defendant’s failure to limit the scope of a general authorization to search, and failure to object when the search exceeds what he later claims was a more limited consent, is an indication the search was within the scope of consent”).

- c. **The Scope of a Consent Search May Be Expanded Through the Suspect's Actions.** "[T]he scope of a consent search is not limited only to those areas or items for which specific verbal permission is granted." [Jones](#), 356 F.3d at 534. Instead, "[c]onsent may be supplied by non-verbal conduct as well." [Id.](#) See, e.g., [Garrido-Santana](#), 360 F.3d at 576 (In upholding consent search, court noted that, "although defendant had the opportunity to do so, he never objected to the officers' search of the gas tank and, thus, neither clarified that the scope of his sweeping consent excluded such a search nor revoked his consent"); [United States v. Jackson](#), 381 F.3d 984, 988 (10th Cir. 2004) ("A defendant's failure to limit the scope of a general authorization to search, and failure to object when the search exceeds what he later claims was a more limited consent, is an indication that the search was within the scope of consent"); [United States v. Mendoza-Gonzalez](#), 318 F.3d 663, 670 (5th Cir.), cert. denied, 538 U.S. 1049 (2003) ("A failure to object to the breadth of the search is properly considered an indication that the search was within the scope of the initial consent"); [United States v. Pena](#), 920 F.2d 1509, 1514-15 (10th Cir. 1990), cert. denied, 501 U.S. 1207 (1991) (Holding that a search of a vehicle's vent panel was within the scope of the defendant's consent to "look" inside the vehicle where the defendant never "attempted to limit or retract his [general] consent" upon seeing the officer begin to remove that panel).
- d. **Destruction of Property Based Upon Consent.** It is typically unreasonable to believe that an individual who has given a general consent to search is consenting to having his or her property damaged or destroyed. [Garrido-Santana](#), 360 F.3d at 576 ("A reasonable person likely would have understood his consent to exclude a search that would damage his property"). Thus, when dealing with a locked container, a law enforcement officer should seek express permission to search that item. See, e.g., [United States v. Osage](#), 235 F.3d 518, 522 (10th Cir. 2000) (Holding that, "before an officer may actually destroy or render completely useless a container which would otherwise be within the scope of a permissive search, the officer must obtain explicit authorization, or have some other, lawful, basis upon which to proceed"); [United States v. Strickland](#), 902 F.2d 937, 942 (11th Cir. 1990) ("Although an individual consenting to a vehicle search should expect that search to be thorough, he need not anticipate that the search will involve the destruction of his vehicle, its parts or contents"). If the consent is granted, the search may proceed. In order to support the reasonableness of any such search, a law enforcement officer should refrain from damaging or destroying the container in the process of opening it. See, e.g., [United States v. Snow](#), 44 F.3d 133, 135 (2d Cir. 1995) (Upholding search of a duffel bag and another bag in part because "[n]either was locked or otherwise secured, and no damage to the bags was required to gain access"). If a key is necessary, for example, the officer should obtain the key and utilize it to gain access to the container.
3. **Third Party Consent Situations.** The types of third party consent situations that may confront a law enforcement officer are limitless. Nonetheless, some basic situations frequently arise in consent cases.

- a. **Husband – Wife Situations.** “Absent an affirmative showing that the consenting spouse has no access to the property searched, the courts generally hold that either spouse may consent to search all of the couple’s property.” *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, DOJ, at 19 (March 2001). See also [United States v. Backus](#), 349 F.3d 1298, 1299 (11th Cir. 2003)(“Under [the] common authority doctrine, a spouse who jointly owns and occupies the marital home with the defendant may consent to a search of it with the same effect as if the defendant himself had done so”); [United States v. Robinson](#), 999 F. Supp. 155, 159 (D. Mass. 1998)(“A familial relationship, such as that of a ... husband and wife, weighs in support of authority to consent”).
- 1) **Some Court Have Held That a Spouse Presumptively Has Authority to Consent.** At least one court has held that “a spouse presumptively has authority to consent to a search of all areas of the homestead; the nonconsenting spouse may rebut this presumption only by showing that the consenting spouse was denied access to the particular area searched.” [United States v. Duran](#), 957 F.2d 499, 505 (7th Cir. 1992). See also [Rith](#), 164 F.3d at 1330 (“Relationships which give rise to a presumption of control of property include ... husband-wife relationships”); [United States v. Gevedon](#), 214 F.3d 807, 811 (7th Cir.), cert. denied, 531 U.S. 916 (2001)(Same).
 - 2) **A Spouse’s Consent May Be Effective Even After the Spouse Leaves the Marital Home.** Several courts have held that a spouse’s consent may be effective even after he or she leaves the marital home. See, e.g., [Backus](#), 349 F.3d at 1304-05 (“Our conclusion finds support in the decisions from all of the other circuits that have addressed issues involving consent from an estranged wife to search the marital home from which she has fled, all of which uphold the resulting searches under various circumstances”); [Gevedon](#), 214 F.3d at 808-11; [United States v. Brannan](#), 898 F.2d 107, 108 (9th Cir.), cert. denied, 498 U.S. 833 (1990); [United States v. Trzaska](#), 859 F.2d 1118, 1120 (2d Cir. 1988), cert. denied, 493 U.S. 839 (1989); [United States v. Crouthers](#), 669 F.2d 635, 643 (10th Cir. 1982); [United States v. Long](#), 524 F.2d 660, 661 (9th Cir. 1975); see also [United States v. Shelton](#), 337 F.3d 529 (5th Cir. 2003)(Involving an estranged wife who left because of her husband’s infidelity).
- b. **Parent – Child Situations.** Consent in parent-child situations can be divided into those where the child was a minor, and those where the child was above the age of 18.

- 1) **Parents Can Ordinarily Consent to a Search of a Minor Child's Property.** As a general rule, "when the perpetrator is a minor, parental consent to search the perpetrator's property and living space will almost always be valid." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*, Computer Crime and Intellectual Property Section, Criminal Division, DOJ, at 20 (March 2001). See, e.g., [Rith](#), 164 F.3d at 1330; [United States v. Whitfield](#), 939 F.2d 1071, 1075 (D.C. Cir. 1991) ("When a minor child's room is involved, agents might reasonably assume that the child's mother, in the performance of her parental duties, would not only be able to enter her child's bedroom but also would regularly do so"); [United States v. Di Prima](#), 472 F.2d 550, 551 (1st Cir. 1973) ("Even if a minor child, living in the bosom of a family, may think of a room as 'his,' the overall dominance will be in his parents"); [Robinson](#), 999 F. Supp. at 157 ("Precedents have firmly established that a parent may consent to the search of a minor's bedroom").
- 2) **Whether a Parent Can Consent to a Search of an Adult Child's Property Depends on Various Factors.** Where an adult child still lives in the home of his or her parents, the issue of parental consent becomes more complicated. In determining whether a parent can consent to a search of an adult child's living areas, courts have focused on two distinct questions.
 - a) **Does the Adult Child Pay Rent?** "Evidence that the defendant paid rent to the third party would tend to show a landlord-tenant relationship." [Rith](#), 164 F.3d at 1331. See also [Robinson](#), 999 F. Supp. at 159 (Where officers failed to make "any inquiry as to whether [child] paid rent," the government could not make "any evidentiary showing of a landlord-tenant relationship"); [United States v. Durham](#), 1998 U.S. Dist. LEXIS 15482 (D. Kan. 1998) (Mother's consent to search son's room in attached garage invalid where, *inter alia*, "defendant had an arrangement with his mother to pay rent").
 - b) **Has the Child Taken Any Steps to Deny the Parents Access or Use of the Room?** "While ... parent-child relationships give rise to a presumption of control for most purposes over the property, that presumption may be rebutted by facts showing an agreement or understanding between the defendant and the third party that the latter must have permission to enter the defendant's room." [Rith](#), 164 F.3d at 1330-1331. Examples of this "include a lock on the bedroom door or an agreement, explicit or implicit, that the third party never enter a particular area." [Id.](#) at 1331. See also [Robinson](#), 999 F. Supp. at 159 ("Generally, a mother has access to the bedroom of an adult son who still lives at home for usual household activities"); [Durham](#), 1998 U.S. Dist. LEXIS 15482 ("The fact that the defendant's mother's keys did not work on either the interior or exterior doors to the locked bedroom was, or should have been, a clear signal to the officers that the defendant was asserting a separate privacy interest in the bedroom").

- 3) **A Minor Child May Consent to a Search of a Parent's Home.** Various circuits have addressed the issue of whether a minor child may consent to a search of a parent's home or property. Assuming that the child has authority over the area to be searched, these circuits hold that "minority does not, *per se*, bar a finding of actual authority to grant third-party consent to entry." [United States v. Gutierrez-Hermosillo](#), 142 F.3d 1225, 1231 (10th Cir.), *cert. denied*, 525 U.S. 900 (1998)(Finding consent given by 14-year old to be valid). Instead, a child's "minority is a factor in determining the voluntariness of her consent." *Id.* See, e.g., [United States v. Clutter](#), 914 F.2d 775, 778 (6th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991)(Consent given by twelve and fourteen year old boys found valid); [Lenz v. Winburn](#), 51 F.3d 1540, 1548-1549 (11th Cir. 1995)(Consent given by 9-year old found valid).
- c. **Roommate Situations.** As a general rule, "when an apartment, for example, is shared, one ordinarily assumes the risk that a co-tenant might consent to a search, at least to all common areas and those areas to which the other has access." [United States v. Ladell](#), 127 F.3d 622, 624 (7th Cir. 1997). See also [Janis](#), 387 F.3d at 686 ("An adult co-occupant of a residence may consent to a search")(citation omitted); [Duran](#), 957 F.2d at 505 ("Two friends inhabiting a two-bedroom apartment might reasonably expect to maintain exclusive access to their respective bedrooms, without explicitly making this expectation clear to one another"). "Unless the complaining co-tenant has somehow limited the other's access to a piece of property, the consenting co-tenant's authority extends to all items on the premises." [United States v. Richard](#), 994 F.2d 244, 250 (5th Cir. 1993). However, see [Georgia v. Randolph](#), 547 U.S. 103, 126 S. Ct. 1515 (2006) (A person with authority over the place to be searched can not give valid consent over the objection of a present objector who also has authority over the place to be searched.)
- d. **Landlord – Tenant Situations.** "In general, a landlord does not have common authority over an apartment or other dwelling unit leased to a tenant." [United States v. Elliott](#), 50 F.3d 180, 185 (2d Cir. 1995), *cert. denied*, 516 U.S. 1050 (1996)[*citing* [Chapman v. United States](#), 365 U.S. 610, 616-18 (1961)]. However, a "landlord does ... have authority to consent to a search by police of dwelling units in his building that are not leased." *Id.* "Further, if the landlord has joint access or control over certain areas of his apartment building for most purposes, he may validly consent to a search of those areas." *Id.*
4. **Third Party Consent Rules Do Not Apply When Another Present Party With Authority Objects.** In 2006, the Supreme Court ruled that the consent of one party with authority over the place to be searched is not valid if another party with authority is present, and refuses to give his consent for the search. Law enforcement officers are not required to try to locate any or all of those who might give or refuse consent to search; however, the officers may not isolate or remove the potentially non-consenting party in order to avoid a possible objection to the search. [Georgia v. Randolph](#), 547 U.S. 103, 121-22 (2006).

- a. **The Person Objecting May Not Have to be Present.** Although Georgia v. Randolph addressed only physically present objectors, the Ninth Circuit has extended Randolph to hold that the objection of a *non*-present party with authority over the area to be searched will defeat consent of a present party. United States v. Murphy, 2008 U.S. App. LEXIS 3505 (9th Cir. 2008) (holding that even when the objector is not present at the scene, “once a co-tenant has registered his objection, his refusal to grant consent remains effective barring some objective manifestation that he has changed his position and no longer objects”). The Eighth Circuit disagrees, holding that the objecting party must be physically present at the scene to defeat consent. US v. Hudspeth, 2008 U.S. App. Lexis 5157 at *18 (8th Cir. 2008) (en banc) (relying on the Randolph Court’s admission that “‘we are drawing a fine line; if a potential defendant with self-interest in objecting is in fact *at the door and objects*, the co-tenant’s permission does not suffice for a reasonable search.’” Hudspeth was not at the door and objecting and does not fall within Randolph’s ‘fine line.’”) (emphasis in original; internal citations omitted).
- b. **Removal of a Potential Objector for a Proper Purpose Is Lawful.** In United States v. Dimodica, 468 F.3d 495 (7th Cir. 2006), defendant’s wife reported that she had been abused by her husband. The wife also told agents that defendant used drugs and likely had drugs and drug paraphernalia in their home, that defendant owned several firearms and likely had firearms in their home, and that defendant was a convicted felon. Police determined that there was probable cause to arrest defendant for abuse and obtained the wife’s permission to search the home. The police found weapons. Defendant contended that the search violated his Fourth Amendment rights because he did not consent to the search. The court found that the officers legally arrested the defendant based on probable cause that he had committed domestic abuse. Once defendant was arrested and removed from the scene, the wife’s consent alone was valid and permitted the officers to legally search the residence.
- c. **There is No Requirement to Seek Out Co-Tenants or to Bring Them to the Scene to Object.** In United States v. Wilburn, 473 F.3d 742 (7th Cir. 2007), a defendant who was suspected of firearms offenses was arrested for an unrelated traffic violation near his home. The defendant was not informed of the firearms investigation. Officers went to the defendant’s home, which he shared with his girlfriend, and obtained consent from the girlfriend to search the home. The defendant, who was outside in the back of the patrol car, was not asked for consent (nor did he offer an objection on his own). When the defendant later challenged the admissibility of the evidence found inside the home, the court held that because the defendant was lawfully arrested and treated like any other arrestee, he was not kept from the premises for the sole purpose of avoiding his objection to the search. The girlfriend’s consent was valid; the police were not obligated to bring the defendant to the home so he could be a party to the discussion regarding consent.

5. **The Doctrine of “Consent Once Removed.”**

The doctrine of “consent once removed” is used primarily in narcotics cases. However, its application is not limited to those types of situations. Accordingly, the instructor may wish to present an overview of the concept. This material is not included in the Student Handbook and is not tested.

- a. **"Consent Once Removed" - Generally.** Generally, the police are required to knock on the door, announce their presence and await admittance for a reasonable time before forcibly entering a residence. See [Wilson v. Arkansas](#), 514 U.S. 927, 929 (1995). However, it is well established that an undercover officer may gain entrance by misrepresenting his identity and may gather evidence while there. See [Lewis v. United States](#), 385 U.S. 206, 211 (1966) ("A government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises for the very purposes contemplated by the occupant"); [United States v. Bramble](#), 103 F.3d 1475, at *6 (9th Cir. 1996) ("If undercover agents, when asked if they were police officers, were required to answer truthfully, their lives would be placed in danger. If a lie in response to such a question made all evidence gathered thereafter the inadmissible fruit of an unlawful entry, all dealers in contraband could insulate themselves from investigation merely by asking every person they contacted in their business to deny that he or she was a law enforcement agent").
- b. **"Consent Once Removed" - The Rule.** "The concept of consent once removed is, ultimately, a variation of the 'traditional' consent doctrine." [United States v. Jachimko](#), 19 F.3d 296, 299 (7th Cir. 1994). Stated succinctly, the rule provides as follows: "When one invites an undercover agent into his house, the agent can summon other agents to assist in the arrest, and the other agents are not guilty of a violation of the Fourth Amendment." [United States v. Paul](#), 808 F.2d 645, 648 (7th Cir. 1986). See also [United States v. Brothers](#), 30 M.J. 289, 292 (C.M.A. 1990) (Noting, "there is authority that, after a consensual entry of the premises has been made by an undercover agent (be he a law-enforcement officer or merely an informant) for the purpose of buying drugs, the agent may reenter with law-enforcement assistance"). In essence, the initial consent is "transferred" to other officers so that they may enter and effect the search and/or arrest. See also [United States v. Akinsanya](#), 53 F.3d 852, 856 (7th Cir. 1995). The rationale for the rule is simply this: "Once consent has been obtained from one with authority to give it, any expectation of privacy has been lost. We seriously doubt that the entry of additional officers would further diminish the consenter's expectation of privacy, and, in the instant case, any remaining expectation of privacy was outweighed by the legitimate concern for the safety of [the officers inside]." [United States v. Rubio](#), 727 F.2d 786, 797 (9th Cir. 1983).
- c. **"Consent Once Removed" - The Requirements.** Generally speaking, there are three requirements for a valid situation involving "consent once removed."
- 1) **Initial Entry With Permission of Authorized Individual.** First, the initial entry into the premise must have been with the permission of someone authorized to consent.
 - 2) **Probable Cause to Arrest or Search is Developed.** Second, probable cause to effect a search or arrest must be established.
 - 3) **Assistance From Other Officers is Immediately Summoned.** Third, the government agent or informant must immediately summon help from other officers.

See, e.g., [Bramble](#), 103 F.3d at 1478; [Akinsanya](#), 53 F.3d at 856 (“The doctrine of ‘consent once removed’ is applicable where the undercover agent or government informant: (1) entered at the express invitation of someone with authority to consent; (2) at that point established the existence of probable cause to effectuate an arrest or search; and (3) immediately summoned help from other officers”); [United States v. Pollard](#), 251 F.3d 643, 648 (6th Cir.), cert. denied, 531 U.S. 999 (2000)(Same); [United States v. Samet](#), 794 F. Supp. 178, 181 (E.D. Va. 1992)(Same).

- d. **The Circuits are Split on Whether “Consent Once Removed” Applies to Both Undercover Agents and Confidential Informants.** Whether the initial consent was granted to an undercover agent or a confidential informant is of no constitutional significance in the Sixth and Seventh Circuits. Where an undercover officer may invite other officers inside the home, the same principle “extends to the case where the initial, consensual entry is by a confidential informant.” [Paul](#), 808 F.2d at 648. See also [Jachimko](#), 19 F.3d at 299; [United States v. Yoon](#), 398 F.3d 802, 807 (6th Cir. 2005). The Tenth Circuit, however, has rejected this expansion of “consent once removed,” holding that the doctrine does not apply to those other than law enforcement officers. [Callahan v. Millard County](#), 494 F.3d 891, 897 (10th Cir. 2007).

NOTE: On March 24, 2008, the Supreme Court granted certiorari to determine whether “consent once removed” applies to those other than law enforcement officers. [Pearson v. Callahan](#), 2008 U.S. LEXIS 2865 (2008).

- e. **In Utilizing “Consent Once Removed,” Officers May Not Exceed the Scope of the Original Consent Given.** “When entering pursuant to the suspect’s ‘consent once removed,’ ... the additional backup officers are restricted to the scope of the consent originally given.” [Bramble](#), 103 F.3d at *8 (internal citations omitted). See also [Pollard](#), 215 F.3d at 649 (Noting “the back-up officers were acting within constitutional limits when they entered to assist him since no further invasion of privacy was involved once the undercover officer made the initial entry”).
- f. **Under the “Consent Once Removed” Doctrine, the Re-Entry to Effect the Arrest or Search Must Be “Immediate.”** Suffice it to say, “one consensual entry [doesn not] mean that law enforcement agents may thereafter enter and exit a home at will.” [United States v. Diaz](#), 814 F.2d 454, 459 (7th Cir.), cert. denied, 484 U.S. 857 (1987). Instead, the re-entry must be “immediate,” although what exactly is meant by that term is subject to interpretation. Compare [United States v. Santiago](#), 1993 U.S. Dist. LEXIS 3242 at *11 (N.D. Ill. 1993)(Upholding re-entry 15 minutes after exit where officers’ “actions after the CI established probable cause essentially constituted an unbroken chain of events, and the arrests were executed without interruption or significant loss of time”), with [United States v. Robeles-Ortega](#), 348 F.3d 679 (7th Cir. 2003) (Finding re-entry after 2 minutes impermissible where the undercover agent did not remain in the apartment; the CI did not momentarily step outside, then knock on the door; and the officers did not “enter the apartment at the same time that the CI exited).

X. EPO #24: IDENTIFY THE REQUIREMENTS ALLOWING AN INVENTORY OF LAWFULLY IMPOUNDED PERSONAL PROPERTY

1. General Rule – Inventory Searches are an Exception to the Warrant Requirement.

Inventory searches are a “well-defined exception to the warrant requirement of the Fourth Amendment.” [Colorado v. Bertine](#), 479 U.S. 367, 371 (1987). See also [United States v. Rowland](#), 341 F.3d 774, 779 (8th Cir. 2003)(“Law enforcement may search a lawfully impounded vehicle to compile an inventory list of the vehicle's contents without violating the Fourth Amendment”). In sum, once an item (e.g., a vehicle) has been lawfully impounded, an inventory search may be conducted if it is done “reasonably.” [South Dakota v. Opperman](#), 428 U.S. 364, 372 (1976). An inventory will be “reasonable” if it is undertaken pursuant to standardized police procedures. [Id.](#) at 376.

- a. **Evidence Found During a Valid Inventory Search is Admissible.** Where evidence is found during a lawfully conducted inventory search, it may be used against the defendant in a later trial. Because inventory searches are routine, non-criminal procedures whose justification does not hinge on the existence of probable cause, “the absence of a warrant is immaterial to the reasonableness of the search.” [Illinois v. Lafayette](#), 462 U.S. 640, 643 (1983). See also [Rowland](#), 341 F.3d at 779 (In conducting an inventory, “officers need neither search warrant nor probable cause, for they are not investigating a crime; instead, they are ‘performing an administrative or care-taking function’”) (citation omitted).
- b. **Inventory Searches Are Not Permitted For the Sole Purpose of Discovering Incriminating Evidence.** To be reasonable under the Fourth Amendment, “an inventory must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory.” [Florida v. Wells](#), 495 U.S. 1, 4 (1990). Thus, where law enforcement officers act “in bad faith or for the sole purpose of investigation,” [Bertine](#), 479 U.S. 373, an inventory search will be held invalid. Of course, a valid inventory search is not prohibited simply because a law enforcement officer also has an investigatory interest. “It is well established that the police are not precluded from conducting inventory searches when they lawfully impound the vehicle of an individual that they also happen to suspect is involved in illegal activity.” [United States v. Wallace](#), 102 F.3d 346, 348 (8th Cir. 1996)(citation omitted). See also [United States v. Petty](#), 367 F.3d 1009, 1013 (8th Cir. 2004)(“That an officer suspects he might uncover evidence in a vehicle ... does not preclude the police from towing a vehicle and inventorying the contents, as long as the impoundment is otherwise valid”); [United States v. Rodriguez-Morales](#), 929 F.2d 780, 787 (1st Cir. 1991), *cert. denied*, 502 U.S. 1030 (1992)(“As long as impoundment pursuant to the community caretaking function is not a mere subterfuge for investigation, the coexistence of investigatory and caretaking motives will not invalidate the seizure”); [United States v. Edwards](#), 242 F.3d 928, 938 (10th Cir. 2001)(“To be justified as an inventory search, however, the search cannot be investigatory in nature but must instead be used only as a tool to record the defendant's belongings to protect the police from potential liability”).

- c. **Evidence Found During a Valid Inventory May Provide Justification For a More Thorough Search.** Where evidence is found during a lawful inventory search, that evidence may provide probable cause for a more thorough search under the vehicle exception to the warrant requirement. See, e.g., [Michigan v. Thomas](#), 458 U.S. 259, 261-62 (1982)(per curiam)(discovery of marihuana during an inventory search could function as probable cause to support a second, more comprehensive search of the vehicle for additional contraband).
- 2. **There are Three Justifications for Conducting Inventory Searches.** In [Opperman](#), the Supreme Court outlined three justifications for allowing law enforcement officers to inventory lawfully impounded property without first obtaining a warrant.
 - a. **Inventory Searches Are Allowed to Protect the Owner's Property.** First, there is a need for law enforcement to protect the owner's property while it remains in police custody.
 - b. **Inventory Searches Are Allowed to Protect Law Enforcement Officer Against Claims or Disputes.** Second, an inventory protects the police against claims or disputes over lost or stolen property.
 - c. **Inventory Searches Are Allowed to Protect Law Enforcement Officers From Potential Dangers.** And third, an inventory is necessary for the protection of the police from potential dangers that may be located in the property.

[Id.](#) at 369. See also [United States v. Moraga](#), 76 Fed. Appx. 223, 228 (10th Cir. 2003) (unpublished) ("Once officers have made a lawful decision to impound a vehicle, they may conduct an inventory search of the vehicle for three reasons: (1) to protect the owner's property while in police custody, (2) to prevent claims of lost, stolen, or vandalized property, and (3) to guard the police from danger"); [United States v. Green](#), 293 F.3d 855, 857 (5th Cir.), cert. denied, 537 U.S. 966 (2002)("Warrantless inventory searches of seized automobiles do not violate the Fourth Amendment if they are conducted "pursuant to standardized regulations and procedures that are consistent with (1) protecting the property of the vehicle's owner, (2) protecting the police against claims or disputes over lost or stolen property, and (3) protecting the police from danger").
- 3. **There are Generally Two (2) Requirements for a Valid Inventory Search.** In order to conduct an inventory search, two (2) requirements must be met. See, e.g., [United States v. Williams](#), 936 F.2d 1243, 1248 (11th Cir. 1991), cert. denied, 503 U.S. 912 (1992)("If a search is to be upheld under the inventory search doctrine, therefore, the police must first have the authority to impound the vehicle and must then follow the procedures outlined in the policy").

- a. **The Property Must Be Lawfully Impounded.** First, the property that is being inventoried must have lawfully come into the possession of law enforcement officers. Generally, “an impoundment must either be supported by probable cause, or be consistent with the police role as ‘caretaker’ of the streets and completely unrelated to an ongoing criminal investigation.” [United States v. Duguay](#), 93 F.3d 346, 352 (7th Cir. 1996), *cert. denied*, 526 U.S. 1029 (1999). See, e.g., [Cady v. Dombrowski](#), 413 U.S. 433, 441 (1973)(Noting that vehicles are commonly taken into police custody based upon “community caretaking functions,” such as towing vehicles for violating parking ordinances and removing vehicles from accident scenes); [Petty](#), 367 F.3d at 1012 (“Police may take protective custody of a vehicle when they have arrested its occupants, even if it is lawfully parked and poses no public safety hazard”)(citation omitted); [United States v. Brown](#), 787 F.2d 929, 931-32 (4th Cir.), *cert. denied*, 479 U.S. 837 (1986)(“For an inventory search to be valid, the vehicle searched should first be in the valid custody of the law enforcement officers conducting the inventory”). The lawful impoundment of a vehicle, for example, is generally based upon one of two distinct sources of authority.
- 1) **Violations of Motor Vehicle Laws.** One source of authority for the impoundment of a stopped, parked, or abandoned vehicle would be a violation of local and state motor vehicle laws. See, e.g., [Opperman](#), 428 U.S. at 375 (“The inventory was conducted only after the car had been impounded for multiple parking violations”); [United States v. Rios](#), 88 F.3d 867, 870 (10th Cir. 1996)(Upholding defendant's motion to suppress because “the government failed to show that the impoundment of the vehicle satisfied [state] law ...”).
 - 2) **“Community Caretaking” Function.** “Impoundment of a vehicle for the safety of the property and the public is a valid ‘community caretaking’ function of the police.” [Petty](#), 367 F.3d at 1011-12 (citation omitted). See also [United States v. Proctor](#), 489 F.3d 1348 (D.C. Cir. 2007) (“The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.”); [Rios](#), 88 F.3d at 870 (Upholding defendant's motion to suppress because “the government failed to show that the impoundment of the vehicle satisfied ... the public safety exception of [South Dakota v. Opperman](#)”). As noted by one court: “The policeman plays a rather special role in our society; in addition to being an enforcer of the criminal law, he is a ‘jack-of-all-emergencies,’ ... expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety. Recognition of this multifaceted role led to the Court’s coinage of the ‘community caretaking’ label in [Cady v. Dombrowski](#).” [Rodriguez-Morales](#), 929 F.2d at 784-85. Further:

"Dealing with vehicle-related problems ranks among such responsibilities. Because of the ubiquity of the automobile in modern American civilization, and the automobile's nature -- mechanically delicate, highly mobile, safely operable only by trained and licensed individuals -- the police are constantly faced with dynamic situations, no two quite identical, in which they, in the exercise of their community caretaking function, must interact with car and driver to promote public safety. Not surprisingly, our fourth amendment jurisprudence has incorporated this reality." Id. at 785.

See also United States v. Kornegay, 885 F.2d 713, 716 (10th Cir. 1989), cert. denied, 495 U.S. 935 (1990) (Finding a vehicle legally impounded where it was legally parked in a public parking lot but defendant was alone, was unlikely to be returning soon because of his arrest, and the car would have been left open to dangers of vandalism or theft).

++ Instructor Reference Only – Community Caretaking. At least one federal circuit has extended the community caretaking exception beyond vehicles to justify warrantless entries of homes. A majority of circuits do not, however. These include the Third Circuit, Ray v. Twp. of Warren, 2010 U.S. App. Lexis 24043 (3rd Cir. 2010), Sixth Circuit, United States v. Williams, 354 F.3d 597 (6th Cir. 2003), Seventh Circuit, United States v. Pichany, 687 F.2d 204 (7th Cir. 1982), Ninth Circuit, United States v. Erickson, 991 F.2d 529 (9th Cir. 1993) and Tenth Circuit, United States v. Bute, 43 F.3d 531 (10th Cir. 1994). Ray v. Twp. of Warren, 2010 U.S. App. Lexis 24043 (3rd Cir. 2010), provides an example in the context of a § 1983 lawsuit seeking damages for a warrantless entry. Given a history of domestic disputes, police entered the estranged husband's home after the wife reported that no one answered when she went to pick up her daughter. No one was home, and the husband sued. The Third Circuit, although granting qualified immunity because the law had not been clearly established, said that it was unwilling to extend the community caretaking extension to permit warrantless entries of homes. By contrast, at least one circuit has allowed warrantless entries of residences as part of community caretaking. The Eighth Circuit did so, albeit in a case that clearly presented exigent circumstances as well (LEO sees a pair of legs laying on the floor over a shotgun as he looks through an open door), United States v. Quezada, 448 F.3d 1005 (8th Cir. 2006). See 2011 (1) AELE Mo. L.J. 101 (January 2011) on which this note is based.

- b. **There Must Also Be a Standardized Policy That Governs the Conduct of the Inventory.** The second requirement of a valid inventory search is that the inventory be conducted in accordance with a standardized inventory policy aimed at accomplishing the justifications for inventory searches. See [Florida v. Wells](#), 495 U.S. at 4 (“Standardized criteria or established routine must regulate” inventory searches). As noted by the Supreme Court: “The underlying rationale for allowing an inventory exception to the Fourth Amendment warrant rule is that police officers are not vested with discretion to determine the scope of the inventory search. This absence of discretion ensures that inventory searches will not be used as a purposeful and general means of discovering evidence of crime.” [Bertine](#), 479 U.S. at 376 (Blackmun, J., concurring)(citation omitted). See also [Petty](#), 367 F.3d at 1012 (“Some degree of ‘standardized criteria’ or ‘established routine’ must regulate these police actions ...”); [United States v. Hurst](#), 228 F.3d 751, 758 (6th Cir. 2000)(“It is well-established that law enforcement officers may make a warrantless search of a legitimately seized vehicle provided the inventory is conducted according to standardized criteria or established routine”); [United States v. Bullock](#), 71 F.3d 171, 177 (5th Cir. 1995), cert. denied, 517 U.S. 1126 (1996)(“In order to prevent inventory searches from concealing such unguided rummaging, Supreme Court has dictated that a single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront”)(quotation and citation omitted).
- 1) **Written Inventories Are Not Required.** While the law enforcement agency involved must have a “standardized” inventory policy, several courts have upheld unwritten standardized policies. See, e.g., [United States v. Griffiths](#), 47 F.3d 74, 78 (2d Cir. 1995); [United States v. Frank](#), 864 F.2d 992, 1002 (3rd Cir. 1988); [United States v. Ford](#), 986 F.2d 57, 60 (4th Cir. 1993); [Bullock](#), 71 F.3d at 177. Nonetheless, as a practical matter, the best way for a law enforcement agency to avoid difficulty with this particular requirement would be to reduce their standardized inventory policy to writing.
 - 2) **Law Enforcement Agencies May Establish Their Own Policies.** Law enforcement agencies may establish their own standardized policies, so long as they are reasonably constructed to accomplish the goals of inventory searches and are conducted in good faith.
 - 3) **Proving the Existence of a Standardized Inventory Procedure.** “The existence of ... a valid procedure may be proven by reference to either written rules and regulations or testimony regarding standard practices.” [United States v. Mendez](#), 315 F.3d 132, 137 (2d Cir. 2002). See also [Petty](#), 367 F.3d at 1012 (“It would have been simpler for the government to present the police department’s written impoundment policy, but testimony can be sufficient to establish police procedures ...”).

4. **The Standardized Policy of the Agency Determines the Scope of an Inventory Search.** The scope of an inventory search is defined by the standardized inventory policy of the particular agency involved. As a general rule, however, inventory searches may not extend any further than is reasonably necessary to discover valuables or other items for safekeeping. For example, when conducting an inventory search of a vehicle, law enforcement officers are not justified in looking into the heater ducts or inside the door panels of a vehicle, in that valuables are not normally kept in such locations.
- a. **Passenger Compartment.** The Supreme Court has upheld inventory searches of the passenger compartments of vehicles. [Opperman](#), 428 U.S. at 376; [Bertine](#), 479 U.S. at 376. See also [United States v. Patterson](#), 140 F.3d 767, 773 (8th Cir.), cert. denied, 525 U.S. 907 (1998). This would normally include searches of glove compartments. [Opperman](#), 428 U.S. at 372 (Noting “standard inventories often include an examination of the glove compartment, since it is a customary place for documents of ownership and registration ... as well as a place for the temporary storage of valuables”)(internal citation omitted).
 - b. **Trunks.** Additionally, inventory searches of the trunk have also been found valid. [Dombrowski](#), 413 U.S. at 448; [United States v. Judge](#), 864 F.2d 1144, 1146 (5th Cir. 1989); [Goodson v. City of Atlanta](#), 763 F.2d 1381, 1386 (11th Cir. 1985). However, it should be remembered that “[e]xcessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search not subject to suppression.” [United States v. Ramirez](#), 523 U.S. 65, 71 (1998). Thus, where a trunk is locked, courts may require officers “ordinarily to use master keys or similar tools to gain entry” and comply with the Fourth Amendment. [United States v. Tueller](#), 349 F.3d 1239, 1245 (10th Cir. 2003).
 - c. **Containers.** Inventory searches of containers, locked or unlocked, may be conducted, so long as the standardized inventory policy permits. [Opperman](#), 428 U.S. at 371 (“When the police take custody of any sort of container [such as] an automobile ... it is reasonable to search the container to itemize the property to be held by the police”); [Bertine](#), 479 U.S. at 376; [Lafayette](#), 462 U.S. at 648; [Wells](#), 495 U.S. at 4.
 - d. **Engine Compartment.** “A valid inventory search conducted by law enforcement officers according to standard procedure may include the engine compartment of a vehicle.” [United States v. Lumpkin](#), 159 F.3d 983, 988 (6th Cir. 1998). See also [United States v. Lewis](#), 3 F.3d 252, 254 (8th Cir. 1993), cert. denied, 511 U.S. 1111 (1994).

5. **There is No Particular Location Where an Inventory Must Be Conducted.**
“Although inventory searches typically occur at a police station or an impoundment facility, rather than at the time of the arrest ... the Fourth Amendment does not require that police conduct inventory searches at any particular location.” [Mendez](#), 315 F.3d at 137 n.3 [citing [Lafayette](#), 462 U.S. at 641 (Police station); [Opperman](#), 428 U.S. at 366 (Impoundment facility); [Wells](#), 495 U.S. at 2 (Impoundment facility); [United States v. Thompson](#), 29 F.3d 62, 64 (2d Cir. 1994)(Impoundment facility); [Bertine](#), 479 U.S. at 368-69 (Uholding inventory search performed when the suspect was taken into custody, before the tow truck arrived)]. See also [Williams](#), 936 F.2d at 1248-49 (On-site inventory of vehicle upheld); [United States v. Chambers](#), 59 Fed. Appx. 509, 510 (4th Cir.) (unpublished), cert. denied, 538 U.S. 1051 (2003)(“An on-site inventory search, as opposed to one that is conducted at an impound lot, is permissible so long as the officer had the initial authority to impound the vehicle”).

Y. EPO #25: IDENTIFY THE CIRCUMSTANCES WHEN AN INSPECTION IS PERMITTED FOR REAL AND PERSONAL PROPERTY

1. **General Rule – Administrative Inspections (Searches) are an Exception to the Warrant Requirement.** The Supreme Court has “allowed searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited.” [City of Indianapolis v. Edmond](#), 531 U.S. 32, 37 (2000). Generally termed “inspections,” these types of administrative searches take place in a variety of different forums, and are directed against both personal and real property. Some of the more common “inspections” are discussed below.
2. **The Purpose of an Administrative Search is Not to Investigative Criminal Activity.** Administrative searches may not be used to investigative criminal activity. “If the primary object of the search is to gather evidence of criminal activity, a criminal search warrant may be obtained only on a showing of probable cause to believe that relevant evidence will be found in the place to be searched.” [Michigan v. Clifford](#), 464 U.S. 287, 294 (1984). Of course, “if evidence of criminal activity is discovered during the course of a valid administrative search, it may be seized under the ‘plain view’ doctrine ... [and] may be used to establish probable cause to obtain a criminal search warrant.” *Id.* See also [New York v. Burger](#), 482 U.S. 691, 716 (1987)(“The discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal or the administrative scheme suspect”); [United States v. Bulacan](#), 156 F.3d 963, 973 (9th Cir. 1998)(“When an administrative search scheme encompasses both a permissible and an impermissible purpose, and when the officer conducting the search has broad discretion in carrying out the search, that search does not meet the Fourth Amendment's reasonableness requirements”). [Sanchez v. County of San Diego](#), 464 F.3d 916 (9th Cir. 2006) (Consent-based home inspections to prevent welfare fraud, where the only ramification of refusal to consent is ineligibility for welfare benefits is not an unreasonable as the inspections are not conducted to detect criminal activity.)

++ Workplace Searches. The government does not need a search warrant to search a government employee's workplace or government-issued equipment. Thus in the recent case of [Quon v. City of Ontario](#), 130 S.Ct. 2619 (2010), the Supreme Court found that a supervisor's review of the text messages sent and received on a SWAT member's government-issued pager was reasonable even in the absence of a warrant or suspicion of wrongdoing. The search was part of an audit to make sure that employees were not being required to pay to send and receive work-related communications. Because this was a "legitimate, work-related" purpose, the search was found reasonable.

3. **Sobriety Checkpoints Are Permissible.** The use of highway sobriety checkpoints does not violate the Fourth Amendment. See [Michigan Dep't of State Police v. Sitz](#), 496 U.S. 444, 447 (1990). In reaching this conclusion, the Court balanced "the State's interest in preventing accidents caused by drunk drivers, the effectiveness of sobriety checkpoints in achieving that goal, and the level of intrusion on an individual's privacy caused by the checkpoints." [Id.](#) at 449. And, "in sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of [sobriety checkpoints]." [Id.](#) at 455.
4. **Driver's License and Registration Checkpoints Are Permissible.** In [Delaware v. Prouse](#), 440 U.S. 648, 663 (1979), the Supreme Court "suggested that a similar type of roadblock [as that in [Sitz](#)] with the purpose of verifying drivers' licenses and vehicle registrations would be permissible." [Edmond](#), 531 U.S. at 38.
5. **Information - Gathering Checkpoints Are Permissible.** "[S]pecial law enforcement concerns will sometimes justify highway stops without individualized suspicion." [Illinois v. Lidster](#), 540 U.S. 419, 124 S. Ct. 885, 889 (2004). Such is the case in a situation where the checkpoint is set up to gather information regarding a previous crime, as it was in [Lidster](#). Thus, where "[t]he stop's primary law enforcement purpose [is] *not* to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others," [id.](#), no individualized suspicion is necessary. In fact, "the concept of individualized suspicion has little role to play" in this type of situation, [id.](#), in that "an information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual." [Id.](#) Finally, "information-seeking highway stops are less likely to provoke anxiety or to prove intrusive. The stops are likely brief. The police are not likely to ask questions designed to elicit self-incriminating information. And citizens will often react positively when police simply ask for their help as 'responsible citizens' to 'give whatever information they may have to aid in law enforcement.'" [Id.](#) (citation omitted).

6. **Checkpoints For General Crime Control Purposes Are Impermissible.** The Supreme Court has “never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.” [Edmond](#), 531 U.S. at 41. Instead, the Court has “recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion.” *Id.* Additionally, “each of the checkpoint programs [the Court has] approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety.” *Id.* The Court has been “particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends.” *Id.* at 43. Thus, in [Edmond](#), where the “primary purpose of the ... narcotics checkpoints [was] ... to advance ‘the general interest in crime control,’ *id.* at 44, the Court “decline[d] to suspend the usual requirement of individualized suspicion where the police [sought] to employ a checkpoint primarily for the ordinary enterprise of investigating crimes.” *Id.*
7. **Administrative Inspections of Businesses.** “The inspection of business premises and operations is commonplace in our society. Virtually all businesses, without regard to their character, are subject to inspection of their premises to ensure compliance with fire, health, and safety regulations.” 4 W. LaFare, *Search and Seizure* § 10.2, p. 401 (3d ed. 1996).
- a. **Administrative Searches Generally Require Warrants.** The Supreme Court has repeatedly held “that administrative searches generally require warrants.” [Clifford](#), 464 U.S. at 291. See [Marshall v. Barlow’s, Inc.](#), 436 U.S. 307, 324 (1978); [Michigan v. Tyler](#), 436 U.S. 499, 504-508 (1978); [Camara v. Municipal Court](#), 387 U.S. 523, 534 (1967); [See v. City of Seattle](#), 387 U.S. 541, 543-544 (1967).
- 1) **Warrants in Administrative Search Cases Do Not Require Traditional Probable Cause.** When a law enforcement officer obtains an administrative search warrant, “probable cause in the criminal law sense is not required.” [Marshall](#), 436 U.S. at 320. “If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.” [Camara](#), 387 U.S. at 539. Thus, “for purposes of an administrative search ... probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that ‘reasonable legislative or administrative standards for conducting an ... inspection are satisfied with respect to a particular establishment.’” [Marshall](#), 436 U.S. at 320 (internal footnote and brackets omitted)(citation omitted).
- 2) **There Must Be a Regulatory Scheme for the Administrative Search.** “A search not authorized by [a] regulatory scheme is unreasonable unless it independently satisfies traditional Fourth Amendment requirements.” [United States v. Payne](#), 181 F.3d 781, 787 (6th Cir. 1999). See [Clifford](#), 464 U.S. at 294 n.5 (“Probable cause to issue an administrative warrant exists if reasonable legislative, administrative, or judicially prescribed standards for conducting an inspection are satisfied ...”).

- 3) **Consent Should Normally Be Sought Before Obtaining a Warrant for an Administrative Search.** “As a practical matter and in light of the Fourth Amendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused” [Camara](#), 387 U.S. at 539. This is because “most citizens allow inspections of their property without a warrant.” [Id.](#)
- b. **Closely Regulated Businesses.** The firearms and alcohol industries are among the most closely regulated in this country. “Because the owner or operator of commercial premises in a ‘closely regulated’ industry has a reduced expectation of privacy, the warrant and probable cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search, have lessened application in this context.” [Burger](#), 482 U.S. at 702 (internal citation omitted). See also [United States v. Mendoza-Gonzalez](#), 363 F.3d 788, 794 (8th Cir. 2004) (“Commercial trucking is a closely regulated industry within the meaning of [Burger](#)”)(citation omitted). Accord [United States v. Vasquez-Castillo](#), 258 F.3d 1207, 1210 (10th Cir. 2001); [United States v. Fort](#), 248 F.3d 475, 480-82 (5th Cir.), cert. denied, 534 U.S. 977 (2001); [United States v. Dominguez-Prieto](#), 923 F.2d 464, 468-70 (6th Cir.), cert. denied, 500 U.S. 936 (1991).
- 1) **Rationale for the “Closely Regulated Business” Exception.** There are two justifications for allowing warrantless administrative searches of closely regulated businesses.
- a) **Inspection Purpose Could Be Easily Frustrated.** “If inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible.” [United States v. Biswell](#), 406 U.S. 311, 316 (1972). See also [Crosby v. Paulk](#), 187 F.3d 1339, 1347 (11th Cir. 1999)(“Unannounced or surprise inspections are crucial if the regulatory scheme ... is to function at all”)(citation omitted).
- b) **Pervasive Regulation Reduces the Expectation of Privacy.** The Supreme Court has “recognized a reduced expectation of privacy for regulated industries, and, thus, the Fourth Amendment standard of reasonableness for a government search has lessened application in this context.” [Fort](#), 248 F.3d at 482. See [Burger](#), 482 U.S. at 702 (Holding that “owner or operator of commercial premises in a ‘closely regulated’ industry has a reduced expectation of privacy”).
- 2) **Search of “Closely Regulated Business” Still Must Be Reasonable.** Notwithstanding the above, a warrantless search of even a closely regulated business must be “reasonable.” In this context, a “warrantless inspection ... will be deemed to be reasonable only so long as three criteria are met.” [Burger](#), 482 U.S. at 702.
- a) **There Must Be a Substantial Government Interest.** First, there must be a “substantial” government interest in the regulatory scheme pursuant to which the inspection is made, [Id.](#);

- b) **The Warrantless Inspection Must Be Necessary.** “Second, the warrantless inspections must be ‘necessary to further the regulatory scheme,’” [Id.](#) (internal brackets omitted);
 - c) **The Inspection Program Must Provide an Adequate Substitute for a Warrant.** Third, “the statute’s inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant,” [Id.](#) at 703. In essence, “the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers.” [Id.](#)
- 3) **Administrative Inspections May Not Be Used as a Pretext for Gathering Criminal Evidence.** “Although the government may address a problem in a regulated industry through administrative and penal sanctions ... an administrative inspection may not be used as a pretext solely to gather evidence of criminal activity.” [United States v. Johnson](#), 994 F.2d 740, 742 (10th Cir. 1993). See also [Whren v. United States](#), 517 U.S. 806, 811-12 (1996) (Noting that “the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administrative regulation, is not accorded to searches that are not made for those purposes”); [Anobile v. Pelligrino](#), 274 F.3d 45, 59 (2d Cir. 2001) (“The Supreme Court has acknowledged, however, that a search may be invalid if the administrative inspection was a ‘pretext’ for obtaining evidence of general criminal activity”).
8. **Security Checkpoints at Sensitive Government Facilities and Airports.** Security screening at sensitive government facilities and airports generally consists of using magnetometers and x-ray machines to examine individuals and their containers. It is clear that the use of both magnetometers and x-ray machines to scan individuals and their belongings constitutes a search implicating the Fourth Amendment. See [United States v. Epperson](#), 454 F.2d 769, 770 (4th Cir.), cert. denied, 406 U.S. 947 (1972). It is equally clear that “a search conducted without a warrant is unreasonable unless it falls within one of the classes of permissible warrantless searches.” [Cady v. Dombrowski](#), 413 U.S. 433, 439 (1973). The administrative search exception to the Fourth Amendment’s probable cause and warrant requirements has been relied upon to support this type of security screening.

- a. **Searches at Security Checkpoints.** Screening searches conducted at designated security checkpoints in airports and sensitive government facilities fall within one of the permissible "classes" of warrantless searches, namely, administrative searches that are "conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as a part of a criminal investigation to secure evidence of a crime." [United States v. Davis](#), 482 F.2d 893, 908 (9th Cir. 1973); [Camara v. Municipal Court](#), 387 U.S. 523, 528-29 (1967). Thus, the constitutionality of a security screening search does not depend on either ongoing consent or irrevocable implied consent. When a screening search is otherwise reasonable and conducted pursuant to statutory authority (such as 49 § U.S.C. 44901), all that is required is a person's election to attempt entry into the secured area of the facility. See, e.g., [United States v. Aukai](#), 497 F.3d 955 (9th Cir. 2007) (airport security screening).
- b. **Searches Prior to Security Checkpoints.** Courts have been quick to note "a sharp distinction between a search conducted at an airport boarding gate and the search of certain persons in the general airport area." [United States v. Wehrli](#), 637 F.2d 408, 409 n.1 (5th Cir. Unit B, 1981)(citations omitted). For example, in [United States v. Skipwith](#), 482 F.2d 1272 (5th Cir. 1973), the court distinguished between "searches of persons in the general airport area" and those "who actually present themselves for boarding on an air carrier." *Id.* at 1276. Citing [United States v. Moreno](#), 475 F.2d 44 (5th Cir. 1973), the court noted that, "while [Moreno](#) established that searches of persons in the general airport area are to be tested under a case-by-case application of the reasonableness standard, we hold that those who actually present themselves for boarding on an air carrier, like those seeking entrance into the country, are subject to a search based on mere or unsupported suspicion." [Skipwith](#), 482 F.2d at 1276. In sum, it would appear that different standards apply to those who are searched at boarding gates as opposed to those who are simply within the general airport area when the search commences. As one commentator has noted:
- "[In [Skipwith](#)], the court concluded that the standard for initiating a search at the boarding gate would be similar to that at an international border. Passengers presenting themselves for boarding therefore are subject to be searched on the basis of mere suspicion. Further, the search is limited to the point where one boards the aircraft, thereby protecting those individuals merely passing by."
- John Rogers, [Bombs, Borders, and Boarding: Combating International Terrorism at United States Airports and the Fourth Amendment](#), 20 Suffolk Transnat'l L. Rev. 501, 530 (1997).

- c. **The Point of No Return: Security Checkpoints.** Individuals wishing to fly on an airplane or enter a sensitive government facility are required to participate in the screening process. Those not willing to undergo security screening have the option of choosing not to enter the security checkpoint. In fact, screening searches are valid only if they recognize the right of a person to avoid a search by electing not to enter the secured area. See, e.g., [United States v. Davis](#), 482 F.2d 893, 910-11 (9th Cir. 1973) (airport search). Someone who begins the security screening process, however, no longer has the right to avoid a search by electing to leave. See, e.g. [United States v. Hartwell](#), 436 F.3d 174 (3rd Cir. 2006) (one who submits to a screening search in the airport cannot terminate the search by changing his mind and electing not to fly). “As several courts have noted, a right to leave once screening procedures begin ‘would constitute a one-way street for the benefit of a party planning . . . mischief,’ and would ‘encourage . . . terrorism by providing a secure exit where detection was threatened.” Id. See also [Torbet v. United Airlines, Inc.](#), 298 F.3d 1087, 1090 (9th Cir. 2002) (“The Fourth Amendment does not require that passengers be given a safe exit once detection is threatened”)(citation omitted); [United States v. Haynie](#), 637 F.2d 227, 231 (4th Cir. 1980) (“It appears to us that a rule under which consent to a screening search is limited by the ability to withdraw at any time could only encourage attempted hijacking by providing a secure exit should detection be threatened”); [United States v. Cyzewski](#), 484 F.2d 509, 514 n.4 (5th Cir. 1973), cert. denied, 415 U.S. 902 (1974) (“This court has made clear that an investigation need not be curtailed simply because a suspect decides not to take a particular flight. We have expressly decided to reject the right-to-leave argument”).
- d. simply because a suspect decides not to take a particular flight. We have expressly decided to reject the right-to-leave argument”).

Z. EPO #26: IDENTIFY CIRCUMSTANCES WHEN A WARRANT IS REQUIRED TO SEIZE VEHICLES SUBJECT TO THE GENERAL FORFEITURE STATUTE

NOTE: AS OF 3-18-08, THIS EPO IS NOT TAUGHT IN ANY FLETC PROGRAM. THE INFORMATION HAS NOT BEEN UPDATED SINCE THE FEBRUARY 2007 REVISION OF THIS LESSON PLAN.

1. **General Rule – Where a Vehicle is Contraband Subject to Forfeiture Under An Applicable Statute, It May Be Seized in a Public Place Without a Warrant.** As a general rule, “where there is probable cause to believe that [a] vehicle is, itself, contraband and subject to forfeiture under applicable statutes, and the vehicle is located in a public place, the vehicle may be seized without a warrant even though there is no separate probable cause to search the vehicle.” P. Joseph, *Warrantless Search Law Deskbook* § 20.2, p. 20-11 (2000). See [Florida v. White](#), 526 U.S. 559, 561 (1999) (Holding that Fourth Amendment does not require “police to obtain a warrant before seizing an automobile from a public place when they have probable cause to believe that it is forfeitable contraband”).
2. **Prohibition on Transporting Contraband.** The general prohibition on using vehicles, aircraft, or vessels to transport contraband is contained at [Title 49 U.S.C. § 80302](#). Subsection (b) of this statute provides that “a person may not:
 - a. Transport contraband in an aircraft, vehicle, or vessel;
 - b. Conceal or possess contraband on an aircraft, vehicle, or vessel; or
 - c. Use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.”

3. **“Contraband” – Defined.** “Contraband” is defined in subsection (a) of Title [49 U.S.C. § 80302](#), and includes in its definition the following items:
- a. **Narcotics.** A narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([Title 21 U.S.C. § 802](#))), including marihuana (as defined in section 102 of that Act ([Title 21 U.S.C. § 802](#))), that:
 - 1). Is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;
 - 2). Is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;
 - 3). Is acquired by theft, robbery, or burglary and transported:
 - a). In the District of Columbia or a territory or possession of the United States; or
 - b). From a place in a State, the District of Columbia, or a territory or possession of the United States, to a place in another State, the District of Columbia, or a territory or possession; or
 - c). Does not bear tax-paid internal revenue stamps required by those laws or regulations;
 - b. **Firearms.** A firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 ([Title 26 U.S.C. § 5801 et seq.](#)).
 - c. **Forged, Altered, or Counterfeited Coins or Obligations.** A forged, altered, or counterfeit:
 - 1). **Coin or an obligation or other security of the United States Government** (as defined in section 8 of title 18 [[Title 18 U.S.C. § 8](#)]); or
 - 2). Coin, obligation, or other security of the government of a foreign country.
 - d. **Material or Equipment Used in Making Forged, Altered, or Counterfeited Coins or Obligations.** Material or equipment used, or intended to be used, in making a coin, obligation, or other security referred to in subsection (c), above;
 - e. **Cigarettes.** A cigarette involved in a violation of chapter 114 of title 18 [[Title 18 U.S.C. §§ 2341 et seq.](#)] or a regulation prescribed under chapter 114 [[Title 18 U.S.C. §§ 2341 et seq.](#)]; or
 - f. **Copyright Phonorecords or Computer Programs and Documentation**
 - 1). A counterfeit label for a phonorecord, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audiovisual work (as defined in [section 2318 of title 18](#));
 - 2). A phonorecord or copy in violation of section [2319 of title 18](#);
 - 3). A fixation of a sound recording or music video of a live musical performance in violation of section [2319A of title 18](#); or
 - 4). **Any good bearing a counterfeit mark** (as defined in [section 2320 of title 18](#)).

4. **Right to Forfeit Conveyances.** [Title 49 U.S.C. § 80303](#) provides the authority to forfeit a conveyance that has been used in violation of [Title 18 U.S.C. § 80302](#). [Section 80303](#) provides, in pertinent part, that an authorized law enforcement officer “shall seize an aircraft, vehicle, or vessel involved in a violation of [section 80302](#) and place it in the custody of a person designated by the Secretary or appropriate Governor, as the case may be.”
5. **Exceptions to Forfeiture.** [Section 80303](#) also provides that “the seized aircraft, vehicle, or vessel shall be forfeited.” However, there are two exceptions to the general rule.
 - a. **Innocent-Owner Defense.** The statute mandates forfeiture of the conveyance “except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State.” “An owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use.” [Bennis v. Michigan](#), 516 U.S. 442, 446 (1996). See also [United States v. Bajakajian](#), 524 U.S. 321, 330 (1998) (“Historically, the conduct of the property owner was irrelevant; indeed, the owner of forfeited property could be entirely innocent of any crime”). Nonetheless, [section 80303](#) “contains a limited innocent-owner defense.” [United States v. One 1997 Ford Expedition Util. Vehicle](#), 135 F. Supp. 2d 1142, 1144 (D.N.M. 2001). However, “the only innocent-owner defense allowed by the statute is that an individual other than the owner stole the vehicle or otherwise obtained it illegally, and then used the vehicle to commit a violation of [Section 80302](#).” *Id.* So, for example, where the individual obtained the vehicle consensually, the innocent-owner would not be available. *Id.*
 - b. **Common Carriers.** When the conveyance is one used by a common carrier, forfeiture may occur only when specific circumstances occur. Specifically, “an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when
 - 1) The owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;
 - 2) The owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or
 - 3) The master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.”
6. **Probable Cause is Required to Seize the Conveyance.** “If agents have probable cause to believe that a car is or has been used for carrying contraband, they may summarily seize it pursuant to the federal forfeiture statutes and search it.” [United States v. Capra](#), 501 F.2d 267, 280 (2d Cir. 1974), *cert. denied*, 420 U.S. 990 (1975). “Indeed, a vehicle may be seized even in the absence of probable cause to believe it contains contraband if there is nonetheless probable cause to believe that it was used ‘to facilitate the transfer of contraband.’” [United States v. Johnson](#), 572 F.2d 227, 234 (9th Cir.), *cert. denied*, 437 U.S. 907 (1978).

AA. EPO 27. IDENTIFY THE LEGAL STANDARD FOR SEARCHING PEOPLE AND PACKAGES ENTERING AND LEAVING FEDERAL BUILDINGS AND INSTALLATIONS. [MEPO 1211-27] [TAUGHT ONLY IN IPOTP] LESSON PLAN TRACKS STUDENT TEXT

1. *** The government has a duty to protect the safety of its employees and workplaces from terrorists and others bent on violence. The government has a duty to protect public property from vandalism and theft. The government has a duty to protect the security of sensitive and classified government information. The government has the duty to preserve the efficiency and safety of its workplaces. For all these reasons, the government can, if it meets the restrictions discussed below, conduct gate inspections of inbound and outbound persons, vehicles, and packages entering and leaving federal buildings and installations.
2. Gate inspections directly protect federal property by catching and stopping the entry and exit of problematic people and items. They also indirectly protect federal property because the prospect of being caught by an inspection discourages people from trying to smuggle problematic items in and out of federal installations.
3. Restrictions on Gate Inspections
 - a. People have the fundamental right to be free of unreasonable searches and seizures. People do not lose their Fourth Amendment rights merely because they want to enter a federal building or work for the federal government. Accordingly, there are a number of restrictions imposed on gate inspections to ensure that they are lawful.
 - 1) Inspections must be necessary. This has two components.
 - a) First, there must be a realistic threat of harm. This could be violence, vandalism, theft, security violations or other identified adverse impacts on the safety, welfare or mission of the federal installation and those people on it. The threat must be identified, but it need not be imminent or certain. At the same time, it cannot be based on wildly unlikely conjecture.
 - b) Second, gate inspections must be necessary to prevent the identified threat. If the threat can be prevented by some less intrusive method, that method should be used instead. For example, a large and open federal hospital complex may have a single building containing classified documents. Although it would be sensible to conduct gate inspections at the checkpoint at the door to this building, it would be difficult to justify gate inspections of everyone entering and leaving the complex's front gate solely to protect the classified documents.
 - 2) Gate inspections must be authorized by regulation. The regulation serves several purposes.
 - a) The regulation identifies the threat that the inspection is designed to minimize or prevent.
 - b) The regulation tailors how each inspection will be conducted. In setting the scope of the inspection, the regulation must strike a balance.

- (1) On the one hand, the inspection must be sufficiently thorough to prevent or minimize the identified threat. For example, an inspection designed to prevent employee theft of government desktop computers would legitimately focus on inspecting outbound vehicles and the boxes and other containers in those vehicles big enough to hide desktop computers.
 - (2) On the other hand, the inspection cannot be more intrusive than required to prevent or minimize the threat. Thus, extending the inspection just discussed to allow searching the wallets of inbound personnel would be unreasonable and not permitted.
- c) These regulations will typically require that notice of the inspection be posted on a sign at all entrances. These regulations also typically state that while a person can refuse to submit to an inspection, his refusal justifies denying him entry to the federal building or installation. These regulations also typically state that if the person chooses to submit to inspection screening by entering the screening area and/or beginning the screening process, he can be required to complete the process.
- d) The regulation must ensure that inspections are not misused to harass particular individuals or as a subterfuge to conduct a traditional search for criminal evidence when a warrant or probable cause is lacking. This is ordinarily done by adopting procedures to ensure that inspections are done randomly. Among the steps taken are: doing a 100% inspection of every vehicle or person; inspecting every second, third or fourth vehicle as it enters or exits on a given day; or inspecting all vehicles or persons for a given period of time at randomly selected times of the day.
- b. The actual inspection must follow the regulation. For example, if the regulation only authorizes inspections of inbound vehicles, gate guards cannot inspect outbound vehicles. Failure to follow the regulation would result in the exclusion of any evidence found.

What happens if a guard discovers illegal drugs or some other plainly incriminating evidence in the course of an authorized gate inspection? The evidence will be seized and held under the plain view seizure doctrine.

III. SUMMARY

A. REVIEW OF PERFORMANCE OBJECTIVES

1. Recognize when the Fourth Amendment applies to governmental action. **MEPO 1211-1**
2. Identify situations in which a reasonable expectation of privacy exists. **MEPO 1211-2**
3. Identify appropriate actions that may be taken when reasonable suspicion exists. **MEPO 1211-3**
4. Identify when law enforcement officers may or may not use race to justify stops or arrests in accordance with Department of Justice Guidelines. **MEPO 1211-4**
5. Identify when probable cause exists to the extent that an arrest or search may be justified. **MEPO 1211-5**
6. Identify the origin, purpose and scope of the exclusionary rule. **MEPO 1211-6**
7. Identify exceptions to the exclusionary rule, e.g., no standing to object, good faith, inevitable discovery, and impeachment. **MEPO 1211-7**
8. Identify the limitations of an arrest warrant. **MEPO 1211-8**
9. Identify when an arrest involving a felony requires the use of a warrant. **MEPO 1211-9**
10. Identify when an arrest involving a misdemeanor requires the use of a warrant. **MEPO 1211-10**
11. Identify the conditions under which an officer an officer may use force to execute a warrant (search or arrest) according to the provisions of Title 18 U.S.C. § 3109. **MEPO 1211-11.**
12. Identify those officials who have the authority to issue Federal search warrants. **MEPO 1211-12**
13. Identify the components of an affidavit for a search warrant. **MEPO 1211-13**
14. Identify circumstances when a telephonic search warrant should be obtained. **MEPO 1211-14**
15. Identify the legal requirements for executing a search warrant, e.g., authority to execute; time of entry; method of entry; locations on a premises which may be searched; duration of the search; and inventory. **MEPO 1211-15**
16. Identify the scope and purpose of a protective sweep. **MEPO 1211-16**
17. . Identify circumstances in which persons on the premises may or may not be searched for evidence or frisked during the execution of a premises warrant. **MEPO 1211-17**
18. Identify the circumstances in which evidence may be seized under the plain view doctrine. **MEPO 1211-18**
19. Identify fact situations where warrantless searches are allowed regarding motor vehicles. **MEPO 1211-19**
20. Identify fact situations where warrantless searches are allowed during exigent circumstances, e.g., hot pursuit, destruction or removal of evidence, and emergency scenes. **MEPO 1211-20**
21. Identify the requirements and scope of a search incident to a lawful arrest. **MEPO 1211-21**
22. Identify circumstances where a suspect's consent to search is voluntary. **MEPO 1211-22**
23. Identify the circumstances in which a third party has the actual or apparent authority to grant consent to search a suspect's property. **MEPO 1211-23**
24. Identify the requirements allowing an inventory of lawfully impounded personal property. **MEPO 1211-24**

25. Identify the circumstances when an inspection is permitted for real and personal property. **MEPO 1211-25**
26. Identify circumstances when a warrant is required to seize vehicles subject to the general forfeiture statute. **MEPO 1211-26**
27. Identify the legal standard for searching people and packages entering and leaving federal buildings and installations. **[MEPO 1211-27]**

B. REVIEW OF TEACHING POINTS

1. Summarize teaching points
2. Plan time for asking and answering questions

IV. APPLICATION

A. LABORATORY

1. Students in the CITP will have a two-hour "Search Warrant Lab" as part of their continuing case investigation, as well as four hours of Probable Cause Lab. UPTP and IPOTP have four hours of a Legal Skills Lab to apply the principles taught in class to scenario-based training, and a two-hour Computer Based Skills Lab. Additional materials regarding these labs and PE are currently stored in a separate folder on the shared "L" drive.

B. PRACTICAL EXERCISE

1. Students in the CITP will have a two-hour practical exercise devoted to drafting a search warrant as part of their continuous case investigation (Phase 9). Additional materials regarding that practical exercise are currently stored in a separate folder on the shared "L" drive.

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(1972)

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(1990)

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(2001)

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(1992)

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TEST ITEM CONTROL SHEET (TICS)

COURSE NUMBER: 1211

COURSE TITLE: FOURTH AMENDMENT

POINT OF CONTACT AND EXTENSION: (b)(6),(b)(7)(C) 912-267 (b)(6),(DATE: MAR 2011

Instructions: If a course is taught in sessions, put the exam number (E01, E02, E03, etc...) that the Enabling Performance Objectives (EPOs) will be tested on in the Exam Distribution Table (EDT). If all EPOs are tested on one exam, place an "X" in each box instead of the exam number. Using the test item numbers Evaluation and Analysis Branch (EAB) has provided, complete the table below. Every EPO tested by Multiple Choice (MC) examination must be represented in each set with at least one test item. If an EPO is tested by Practical Exercise (PE), put "PE" or if not tested at all put "NA" for not applicable in the row corresponding with the EPO number and program acronym column. A TICS and EDT is required for all courses tested at all FLETC locations using a MC and/or PE evaluation. Use more than one form if necessary.

Exam Distribution Table (EDT)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

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1

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~~Page 2100 of 2353~~

IDP VS. ESCOBAR

**DEPARTMENT OF HOMELAND SECURITY
FEDERAL LAW ENFORCEMENT TRAINING CENTER
OFFICE OF TRAINING OPERATIONS
LEGAL DIVISION**



Homeland Security

(b)(7)(E)

LESSON PLAN

FEDERAL CRIMINAL LAW

1091

JUN/07

Revised by: (Jun/06)

(b)(6),(b)(7)(C)

Senior Instructor
Legal Division

Revised by: (Jun/07)

(b)(7)(C),(b)(6)

Senior Instructor
Legal Division

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SYLLABUS

COURSE TITLE: FEDERAL CRIMINAL LAW

COURSE NUMBER: 1091

COURSE DATE: JUN/07 (SYLLABUS MODIFIED & TICS ADDED JAN 08)

LENGTH OF PRESENTATION:

	LECTURE	LAB	P.E.	TOTAL	PROGRAM
A	14:00			14:00	CITP
B	2:00			2:00	TSA-BTP; GSAFPS, GSAFPS-LI, USMP-IS, NNSSA, A_FAMTP
C	6:00			6:00	LMTP; UPTP
D	2:00			2:00	ICITP
E	6:00			6:00	TSA-TEOTP
F	12:00			12:00	TSA-SATP
G	6:00			6:00	ICE-D
H	4:00			4:00	FWSLWIBS
I	8:00			8:00	A_BPOTP

DESCRIPTION:

Through lecture and discussion, this course provides the student with an introduction to criminal law and selected Federal offenses. This course is actually a series of independently taught sessions. These course sessions may be taught by different instructors, so it is imperative that all objectives are covered during the time scheduled. This Lesson Plan covers courses to be provided to many different types of federal officers. Because of this, the EPOs are outlined below with a designation as to which EPOs are to be taught in each course. A generalized outline of course sessions has also been provided for the benefit of the instructor. These should be used only as a general guide. The EPO list should be referred to in determining precisely what material to teach to a specific student group. Instructors will be best served if they treat this Lesson Plan as an encyclopedia of several different courses, the course sessions as a rough guide, and the EPO list as the definitive list of material to cover in a particular course.

TERMINAL PERFORMANCE OBJECTIVE (TPO):

Given a set of facts depicting possible violations of major statutory offenses, the student will identify whether a crime is alleged and determine, if so, whether all elements of the crime are present in accordance with Federal statutes.

ENABLING PERFORMANCE OBJECTIVES (EPO):

Master EPO	EPO	Numbers indicate the session(s) in which the EPO is taught.								
Introduction to Criminal Law / Assault / Bribery (2 hours)		A	B	C	D	E	F	G	H	I
1	Identify the elements of a criminal statute.	1	X	1	X			1	1	X
2	Distinguish between a felony and a misdemeanor.	1	X	1				1	1	X
3	Identify how the Assimilative Crimes Act is applied and distinguish between exclusive, concurrent, and proprietary jurisdiction.	1	X	1				1	1	X
4	Identify the elements of Title 18 U.S.C. § 111.	1	X	1	X			1	1	X
5	Identify the elements of Title 18 U.S.C. § 201.	1	X	1				1	1	X
Federal Firearms Violations (1 hour)		A	B	C	D	E	F	G	H	I
6	Identify categories of individuals prohibited from possessing firearms.	2		2		1	1	2		X
7	Identify procedures to initiate a firearms trace through the Bureau of Alcohol, Tobacco, & Firearms.	2		2		1	1	2		X
8	Identify the weapons listed in Title 18 U.S.C. § 922(a)(4) that require registration with the Bureau of Alcohol, Tobacco, & Firearms and those weapons prohibited on a federal facility.	2		2		1	1	2		X
Parties (1 hour)										
18	Identify when a person may be prosecuted for assisting another in the commission of a crime, in accordance with Title 18 U.S.C. §§ 2-4.	4/5		2	X		3/4			X
Entrapment (1 hour - often taught in a two hour block with False Statements)		A	B	C	D	E	F	G	H	I
9	Recognize when an inducement by the government is permitted or prohibited.	3					2	3		
10	Recognize when predisposition negates an apparent entrapment defense.	3					2	3		

False Statements (1 hour - see EPO #24 for UPTP and LMTP)		A	B	C	D	E	F	G	H	I
11	Identify the elements of Title 18 U.S.C. § 1001.	3		3	X	2	2	3	2	
Conspiracy (4 hours) (EPO 18 is ordinarily taught with Conspiracy. Check that EPO.)		A	B	C	D	E	F	G	H	I
12	Identify how many persons are needed to form a conspiracy.	4/ 5					3/ 4			X
13	Identify when knowledge and intent are sufficient to constitute a conspiracy.	4/ 5					3/ 4			X
14	Recognize an agreement and its functions according to the provisions of Title 18 U.S.C. § 371.	4/ 5					3/ 4			X
15	Recognize the function of an overt act in the crime of conspiracy.	4/ 5					3/ 4			X
16	Identify when a co-conspirator's statement may be used during the prosecution of a conspiracy. [Not currently taught in any program]									
17	Identify the limits of the withdrawer's or late joiner's criminal liability.	4/ 5					3/ 4			X
Parties (1 hour)		A	B	C	D	E	F	G	H	I
18	Identify when a person may be prosecuted for assisting another in the commission of a crime, in accordance with Title 18 U.S.C. §§ 2-4.	4/ 5		2	X		3/ 4			
Obstruction of Justice (2 hours)		A	B	C	D	E	F	G	H	I
19	Identify conduct that can be prosecuted under Title 18 U.S.C. §§ 1503 and 1510.	6					5			
20	Identify the groups of persons who are protected under Title 18 U.S.C. §§ 1512 and 1513.	6					5			
21	Identify conduct that constitutes "tampering," in violation of Title 18 U.S.C. § 1512 and conduct that constitutes "retaliation" in violation of Title 18 U.S.C. § 1513.	6					5			

Federal Fraud Statutes (2 hours)		A	B	C	D	E	F	G	H	I
22	Identify the elements of the Mail Fraud statute, Title 18 U.S.C. § 1341 and the Wire Fraud Statute, Title 18 U.S.C. § 1343.	7					6			
23	Identify the elements of the National Stolen Property Act, Title 18 U.S.C. § 2314.	7					6			
Theft / Embezzlement (2 hours - include EPO #11 when teaching this as a block)		A	B	C	D	E	F	G	H	I
24	Identify the elements of Title 18 U.S.C. § 641.	C B T		3		2			2	
False Statements / Theft / Embezzlement / False Claims / Program Theft / Financial Interest (3 hours – include EPO #11 and EPO #24 when teaching this as a block)		A	B	C	D	E	F	G	H	I
25	Identify the elements of Title 18 U.S.C. § 208.									
26	Identify the elements of Title 18 U.S.C. § 287.									
27	Identify the elements of Title 18 U.S.C. § 666.									

STUDENT SPECIAL REQUIREMENTS:

For each Session, students will refer to the corresponding section of the student text.

METHOD OF EVALUATION:

Written, multiple-choice examination.

INSTRUCTOR GUIDE

METHODOLOGIES:

1. Lecture
2. Question and answer

TRAINING AIDS:

1. Instructor
PowerPoint / Overhead Projector
2. Student:
Student text

SPECIAL INSTRUCTOR REQUIREMENTS:

NONE

OUTLINE OF INSTRUCTION

I. INTRODUCTION TO CRIMINAL LAW / ASSAULT / BRIBERY

A. RAPPORT AND OPENING STATEMENT

1. Criminal law is a very broad legal area. While officers should strive to learn every aspect of criminal law which applies to their job, it is not possible for a new officer to become an expert in criminal law during a brief training period. This course provides an overview of the fundamentals of criminal law and training on selected Federal criminal offenses.
2. This first block of instruction covers Introduction to Criminal Law, Assault, and Bribery. Bribery (18 U.S.C. § 201) is not an EPO for all students. Instructors should refer to the master list and teach the Bribery EPO only to those students who are required to receive this instruction.

B. ENABLING PERFORMANCE OBJECTIVES

EPO #1: Identify the elements of a criminal statute.

EPO #2: Distinguish between a felony and a misdemeanor

EPO #3: Identify how the Assimilative Crimes Act is applied and distinguish between exclusive, concurrent, and proprietary jurisdiction.

EPO #4: Identify the elements of Title 18 U.S.C. § 111.

EPO #5: Identify the elements of Title 18 U.S.C. § 201.

C. EPO #1: IDENTIFY THE ELEMENTS OF A CRIMINAL STATUTE

1. Criminal law is a foundation of the criminal justice system. The subject of criminal law studies what actions are criminally punishable by the government. A crime is an act, or failure to act, punishable by the government. Typical crimes include robbery, rape, burglary, and murder. Crimes are different from torts in that criminal actions are brought by the government for the purpose of punishing the wrongdoer and deterring others from similar conduct. A tort is a civil action for compensation. For example, if a criminal committed a burglary, the government could prosecute him and place him in jail. In a tort action, the victim could sue the wrongdoer for an intentional tort to recover his stolen items.
2. All criminal statutes in the United States are in writing. Each statute contains elements, or components. Each of these elements must be met for the crime to have been completed. At trial the prosecution must prove all the elements of a crime beyond a reasonable doubt to obtain a conviction. Most crimes require a criminal intent and criminal act. In other words, an individual must

both intend to commit a crime and then act in furtherance of that intent. However, that is not true in all cases. For example, a parent could be criminally charged with child abuse for not acting to care for his child.

3. Motive is a very important fact for the investigator and prosecutor. It can be used to solve crimes by identifying potential perpetrators and to prove criminal intent. However, motive is usually never an element of a crime. So-called "hate crime" legislation aimed at those who target certain individuals for assault (minorities, homosexuals, etc.) is an exception to this rule. While brief reference may be made to these laws in class, the issues raised by considering motive in prosecuting "hate crimes" is beyond the scope of this course.
4. The elements of crimes are best explained by example. The federal crime of murder, 18 U.S.C. § 1111 requires "the unlawful killing of a human being with malice aforethought." Murder requires a criminal intent, malice aforethought. Murder also requires a criminal act, to wit: the unlawful killing of a human being. This statutory construction is typical of criminal statutes in the United States.
5. All criminal statutes also require a penalty. Without penalties, our criminal system would have no meaning. These penalties can include fines, probation, incarceration and death. Most criminal statutes provide a range of potential penalties, based on the severity of the offense.

D. EPO #2: DISTINGUISH BETWEEN A FELONY AND A MISDEMEANOR

1. Crimes are distinguished by the potential penalty faced by the criminal. In general, both the federal government and the States define a felony as an offense punishable by over one year in prison. A misdemeanor is an offense punishable by no more than a year in prison.
2. 18 U.S.C. § 3559 specifically classifies federal sentences. A felony is an offense for which the maximum term of imprisonment authorized is more than one year. A misdemeanor is an offense for which the maximum term of imprisonment is one year or less.

E. EPO #3: IDENTIFY HOW THE ASSIMILATIVE CRIMES ACT IS APPLIED AND DISTINGUISH BETWEEN EXCLUSIVE, CONCURRENT AND PROPRIETARY JURISDICTION

1. Jurisdiction relates to the legal authority to act where the crime was committed. The authority of the United States (and therefore its law enforcement officers) depends on the type of jurisdiction applicable to a certain area. Within the boundaries of the United States, there

are three basic types of jurisdiction. These are exclusive jurisdiction, concurrent jurisdiction, and proprietary jurisdiction. Before examining jurisdiction it is necessary to determine what type of federal law is to be enforced.

2. Types of Federal Laws

- a. Laws of General Application: Laws passed by Congress that are "necessary and proper" for the conduct of its business. (There is some federal connection, and regardless of where the crime occurs, the defendant can be prosecuted by the Federal Government).
- b. Examples of laws of general application: 18 U.S.C. 111 Assault on Federal Employee; 18 U.S.C. 641 Theft of Government Property; 18 U.S.C. 371 Conspiracy; 18 U.S.C. 201 Bribery; 18 U.S.C. 1001 False Statements.
- c. Other Federal Laws: where the location of the offense matters. These statutes only apply on certain federal land where the federal government has jurisdiction.
- d. Examples: 18 U.S.C. 1852 Timber removed or transported (. . . that is growing on the public lands of the United States . . .); 18 U.S.C. 1853 Trees cut or injured (. . . growing upon any land of the United States . . .); 18 U.S.C. 661 Theft of Non-Government Property (within the special maritime and territorial jurisdiction) of the United States.

3. Federal Jurisdiction: There are several ways the Federal government obtains the right to enforce its laws on land acquired within a state.

- a. Article 1, § 8, Clause 17 of the United States Constitution.
"The Congress shall have Power...To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by cession of particular States, and the Acceptance of Congress, become the seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings; --"
- b. Other Methods of Acquiring Jurisdiction:

- 1) Federal reservation (often lands always held in Federal ownership);
 - 2) State cession of land to the Federal government for post offices, military installations, prisons, etc. (particularly prior to 1940)
 - 3) Title 40 U.S.C. § 255 (U.S. Govt. must accept State's cession offer post -1940)
- c. Basic Constitutional Authority for Land Management Agencies: The Property Clause. In sum, the Property Clause of the Constitution provides that: *"The Congress shall have Power to dispose of and make all needful rules and Regulations respecting the Territory or other Property belonging to the United States...."* U. S. Const., art. IV, § 3, Cl. 2.
- d. Exclusive Jurisdiction: Exclusive jurisdiction exists where the Federal government has received, by whatever method, all the law enforcement authority of the State with no reservations made to the State. The Federal government conducts all law enforcement activities within these types of areas. State and local law enforcement have no jurisdiction to enforce laws in these areas. Examples areas of exclusive jurisdiction are Yellowstone National Park, some Federal buildings or post offices and some military installations.
- e. Concurrent Jurisdiction: Concurrent jurisdiction exists where a State has granted law enforcement authority to the United States while reserving to itself the right to exercise full law enforcement authority over the area concurrently. In areas of concurrent jurisdiction, both State and Federal Governments may conduct law enforcement activities and may prosecute for criminal violations in their respective court systems. Examples of areas of concurrent jurisdiction are Cape Canaveral National Sea Shore, Grand and Canyon National Park.
- f. Proprietary Jurisdiction: Proprietary jurisdiction exists where the Federal government has acquired some right or title to lands but has not obtained any measure of the State's authority over the area. The Federal government may buy or lease the property, but generally has rights equivalent to a private landowner. However, under the Supremacy and Property Clause of the United States Constitution, Federal law enforcement officers may enforce laws of general application and Federal regulations enacted to protect these areas. Most Forest Service and BLM lands in the western United States are considered owned under proprietary

jurisdiction. As public land in the West was withdrawn from entry and private ownership to create the National Forests, Congress made it clear that the affected States would not lose jurisdiction over these properties. Title 16 U.S.C. § 480 states:

"The jurisdiction, both civil and criminal over persons within National Forests shall not be affected or changed by reason of their existence except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the state wherein any such National Forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction nor the inhabitants thereof, their rights and privileges as citizens or be absolved from their duties as citizens of the state."

4. Assimilative Crimes Act. The Assimilative Crimes Act (Title 18 U.S.C. § 13) comes from the word "assimilate", which means to take in and incorporate as one's own; to absorb. The first such law was passed in 1825. The present act was passed in 1948, and amended in 1994. It provides, in pertinent part, that:
 - a. *"Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in § 7 of this title [the statute defining "special maritime and territorial jurisdiction of the U.S."], or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."*
 - b. *"For purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law."*
 - c. *Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States."*
5. Policy Behind the Statute. The policy behind this statute is to afford

those persons on Federal enclaves the same protection as citizens within the surrounding State, allows State law to become Federal law when there is no Federal law available. The Assimilative Crimes Act allows acts to be prosecuted in Federal court which:

- a. Are a violation of State law,
 - b. Committed on property where the United States has either exclusive or concurrent jurisdiction and
 - c. There is no Federal law available to charge.
6. Assimilation is not available in areas of proprietary jurisdiction. Officers must first know if they are operating within an area of exclusive or concurrent jurisdiction in order to know if they can assimilate state laws.
 7. A Federal Crime Must Not Exist. The Assimilative Crimes Act *operates only when Federal law has not defined the criminal offense*. When a Federal statute or regulation exists prohibiting the conduct, officers cannot use the Assimilative Crimes Act to enlarge or narrow the scope of the crime.

F. EPO# 4: IDENTIFY THE ELEMENTS OF TITLE 18 U.S.C. § 111.

1. Every year, Federal law enforcement officers are assaulted in the line of duty. In order to deter offenders and punish them for using violence against federal officers and employees, Congress enacted 18 U.S.C. § 111 entitled, Assaulting, resisting, or impeding certain officers or employees.
2. By common law definition, an assault is any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm. A battery is intentional and wrongful non – consensual physical contact (touching) by a person (or an object controlled by that person) with another person. Most modern statutes and 18 U.S.C. § 111 use the term “assault” to include both the common law acts of assault and battery.
3. 18 U.S.C. §111 protects individuals designated in 18 U.S.C. §1114 from assault. Those designated in 18 U.S.C. §1114 for protection under 18 U.S.C. §111 include “any officer or employee of the United States or of any agency in any branch of the United States government (including any member of the uniformed services), or any person assisting such an officer or employee in the performance of such duties or on account of that assistance”
4. Specifically, 18 U.S.C. §111 reads as follows:

- a. “Whoever-- (1) *forcibly* assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in §1114 of this title while engaged in or on account of the performance of official duties; or (2) forcibly assaults or intimidates any person who formerly served as a person designated in §1114 on account of the performance of official duties during such person’s term of service, shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned not more than 8 years, or both.”
 - b. “Enhanced penalty. Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.”
- 5. 18 U.S.C. §1114 reads as follows:
 - a. “Whoever kills or attempts to kill *any officer or employee of the United States, or of any agency in any branch of the United States Government (including any member of the uniformed services)* while such officer or employee is engaged in or on account of the performance of official duties, *or any person assisting such an officer or employee* in the performance of such duties or on account of that assistance, shall be punished . . .”
- 6. Of additional interest: Title 18, U.S.C. §115, “Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member.” This statute: (1) protects the families of public officials, judges, and law enforcement officers from retaliatory assault, kidnapping, or murder (including attempts) and (2) punishes threats to do so when the intent is to impede, intimidate or interfere with the Federal official’s duty.
- 7. “Forcibly” means by use of force.
 - a. *Actual physical contact is not necessary.* Force need not actually have been used; it is

sufficient if it was imminently threatened.
United States v. Walker, 835 F.2d 983 (2d. Cir. 1987).

- b. "Forcibly" as used in this section means the defendant forcibly assaulted *or* forcibly resisted *or* forcibly opposed *or* forcibly impeded *or* forcibly intimidated *or* forcibly interfered with the victim but the government need not prove that the defendant did all of those things. It is sufficient that he did any one of the acts charged. Long v. United States, 199 F.2d 717 (4th Cir. 1952).
 - c. Lifting of a menacing hand toward an officer, or shoving, or spitting in the officer's face, can be prosecuted under §111. Although some use of force is required, §111 does not require that the Federal officer be placed in fear or injured.
 - d. All threats of imminent physical harm and any use of physical force is sufficient to satisfy the element of assault. Many fact patterns satisfy this element, including interfering in a pursuit by federal officers, letting dogs loose to attack federal officers, and pointing an empty gun at officers.
 - e. Resistance:
 - 1) As a general rule, no person has a right to resist arrest. Even where the arrest is unlawful, the remedy is for the suspect to submit to the arrest and then file civil and/or criminal charges. Therefore, the unlawfulness of the arrest is not a defense. However, there is some case law suggesting that the use of minimal force to resist unlawful arrest does not violate the law. Realistically, the Department of Justice would not likely pursue a prosecution against an individual who used minimal resistance (like pushing or running away) to avoid an unlawful arrest.
8. Performance of Official Duties: While § 111 does not set forth what constitutes "official duties" and courts construing this language agree that "there is no bright-line test to define performance of official duties." United States v. Hoy, 137 F.3d 726, 729 (2d Cir. 1998), quoting, United States v. Hoffer, 869 F.2d. 123, 125 (1989).
- a. The courts in determining if a federal agent is engaged in the performance of his official

duties examine whether the agent is acting within the scope of what he is employed to do or whether he was engaging in a personal frolic of his own. Hoffer, 869 F.2d at 126, quoting, United States v. Heliczner, 373 F.2d 241 (2d Cir. 1967), see also, United States v. Clemons, 32 F.3d 1504, 1507 (11th Cir. 1994); United States v. Cunningham, 509 F.2d 961 (U.S. App. D.C. 1975).

- b. Whether a federal officer wears a uniform, badge or other identifying credentials is not an essential component of the test, nor is location or work assignment. Defendants have faced criminal liability under § 111 when they assaulted:
- (1) an off-duty park ranger enforcing park rules, United States v. Hohman, 825 F.2d 1363 (9th Cir. 1987);
 - (2) an off-duty DEA officer getting a haircut and overhearing a robbery in progress, United States v. Reid, 517 F.2d 953 (2d Cir. 1975);
 - (3) an IRS agent repossessing a car, United States v. Steich, 759 F.2d 579 (7th Cir. 1985);
 - (4) a federal judge walking to the federal courthouse on a Sunday evening to research a case, United States v. Boone, 738 F.2d 763 (6th Cir. 1984);
 - (5) a federal agent detaining a state-charged suspect, United States v. Lopez, 710 F.2d 1071 (5th Cir. 1983);
 - (6) an off-duty deputy U.S. Marshal arresting a suspect after coming upon a street fracas, United States v. Hoy, 137 F.3d 726 (2d Cir. 1998).
 - (7) An immigration officer who entered a bar to investigate report of three unlawful immigrants was performance of official duties. Amaya v. United States, 247 F.2d 947 (9th Cir. 1957).
 - (8) a U.S. Secret Service agent who, while en route to investigation of credit card

fraud, was assaulted after she stopped to assist a person at scene of accident, since her actions were professional and appropriate, and indicia of her official capacity were evident. United States v. Kelley, 850 F.2d 212 (5th Cir. 1988).

- c. Each of these cases illustrates the fluidity of the term “while engaged” and refuses to define “official duties” either with a rigid time line or highly circumscribed activity. Additionally, Congress has made no attempt to circumscribe these holdings. Hoy, at 730.
 - d. An agent need not be actually engaged in the performance of his duties to come under the protection of this section. Federal employees are also protected from retaliatory assaults initiated on account of the performance of official duties. For example: A DEA Agent was a guest at a wedding reception when he was singled out and brutally attacked solely because he was a DEA Agent. United States v. Velarde, 528 F.2d 387 (9th Cir. 1975). The assailant was convicted. United States v. Hohman, 825 F.2d 1363, 1365 (9th Cir. 1987) shows how a single assault can meet both variations of this element. Ranger Miller had finished his shift at Lake Mead NRA and changed into jogging shorts when he saw a loose dog on the beach. When he told the dog’s owner that this violated park rules, the owner (Hohman) punched him twice. Ranger Miller’s supervisor testified that he “was required to enforce park regulations 24 hours a day.” In the words of the court: “When Miller asked Hohman to comply with local regulations by removing the dog, he was ‘engaged’ in the performance of his duties. When Hohman struck Wilson, it was ‘on account of’ that performance.”
9. Protection under § 111 for those individuals who are not federal employees or officers but who are assaulted while assisting such officer or employee.
- a. Courts have broadly interpreted the term “assisting such officer or employee” mentioned in § 1114.

- b. In United States v. Murphy, 35 F.3d 143, 145 (4th Cir. 1994), the court held that a local jailor assisting the U.S. Marshal Service in the transfer of the defendant to another facility was afforded protection under § § 111 and 1114. The court held that the common usage of the term “to assist” meant that the person was being used to help a federal agent, which was what happened in this case.
 - c. In State v. Chun, 347 F.2d 717, 721 (4th Cir. 1965) the court held that a state agent on loan to the IRS and assisting federal agents is a federal officer for purposes of § 111.
 - d. In United States v. Matthews, 106 F.3d 1092, 1093 (2d Cir. 1997) the court expanded the definition of “assisting” to protect a handyman employed by a private company to install wallboard in a hotel that had been seized by the federal government in a civil forfeiture proceeding. The defendant, a tenant in the hotel, pulled a knife on one of the workers who, he thought, was installing the wallboard incorrectly. The court affirmed the defendant’s conviction under § 111 holding that the handyman “assisting” the Marshal’s service based on the government’s seizure of the hotel.
- 10. Knowledge and Intent: The Supreme Court has found that when enacting 18 U.S.C. 111 Congress intended to protect both federal officers and federal functions and insure a federal forum for the trial of offenses involving federal officers. United States v. Feola, 420 U.S. 671, 679, 683-84 (1975).
- 11.
 - a. All that section 111 requires is an intent to assault, not an intent to assault a Federal officer—even where the officer is an undercover agent and the assailant is not aware the officer is a Federal officer. United States v. Feola, 420 U.S. 671 (1975).
 - b. The assault must be willful. In other words the defendant acted voluntarily and intentionally, and not by mistake or accident.
- 12. Penalties. 18 U.S.C. § 111 has three penalty tiers.

- a. Simple assault, i.e., an attempt or threat to do bodily harm that does not involve an actual touching or a dangerous weapon is a misdemeanor punishable by one year.
- b. "All other cases" are felonies punishable by 8 years. These offenses involve contact but were not committed with a weapon and did not result in bodily injury.
- c. 18 U.S.C. § 111(b) creates an enhanced penalty when a "deadly or dangerous weapon" is used or "bodily injury" results. The penalty for this offense is 20 years. In defining a dangerous weapon, the statute specifically includes "a weapon intended to cause death or danger but which fails to do so by reason of a defective component." Almost any object which is used or attempted to be used in a way that can endanger life or inflict great bodily harm can be a dangerous weapon. United States v. Barber, 297 F. Supp. 917, 923 (D. Del. 1969) collected the following examples: "shoes on feet" can be a dangerous weapon, Medlin v. United States, 207 F.2d 33 (D.C. Cir. 1953), as well as a "wine bottle," Thornton v. United States, 268 F.2d 583 (D.C. Cir. 1959), a "rake," Eagleston v. United States, 172 F.2d 194 (9th Cir. 1949), a "chair," United States v. Johnson, 324 F.2d 264 (4th Cir. 1963), a "brick," State v. Perry, 226 N.C. 530, 39 S.E. 2d 460 (1946), or a "chair leg," Wisniewski v. State, 51 Del. 84, 138 A.2d 333, 341-342 (1957). Other examples include the teeth of an HIV-positive inmate, United States v. Moore, 669 F.Supp. 289 (D.C. Minn. 1987), a defective zip gun, United States v. Gometz, 879 F.2d 256 (7th Cir. 1989), a patrol car door kicked into the shins of an MP by a handcuffed suspect, United States v. Sherwin, 271 F.3d 1231 (10th Cir. 2001), and a walking stick, (United States v. Loman, 551 F.2d 164 (7th Cir. 1977).

G. EPO#5: IDENTIFY THE ELEMENTS OF TITLE 18 U.S.C. § 201.

1. All citizens have a right to fair and ethical treatment by Federal employees. Additionally, federal employees and citizens must rely

upon the honesty of those participating in official positions, such as judges, jurors and witnesses. The bribery statute, 18 U.S.C. § 201, is designed to punish corruption in the federal system.

2. To secure a conviction for bribery under 18 U.S.C. §201(b), the government must prove:
 - a. A corrupt offer or acceptance of something of value;
 - b. That such corrupt offer or acceptance was made to or by an officer of the United States, or person at the time acting for or on behalf of the United States in an official function; and
 - c. That the offer or acceptance was intended to influence the officer or person in the doing of some particular act or performance of some duty in the public official's official capacity.
3. Intent: "Bribery" under 18 U.S.C. §201 (b) requires proof of corrupt criminal intent. It is generally agreed that it involves a bad or evil purpose or motive.
4. EXAMPLES:
 - a. Defendant #1 offered Army Recruiter \$450 to keep Defendant #2 out of the service. Hurley v. United States, 192 F.2d 297 (4th Cir. 1951).
 - b. Defendant gave money to a chief narcotics investigator to release him and give narcotics back. Hone Wu v. United States, 60 F.2d 189 (7th Cir. 1932).
5. 18 U.S.C. §201(c) deals with the lesser included offense of giving or receiving a gratuity. Proof of conduct under these subsections differs from that of bribery. United States v. Hsieh Hui Mei Chen, 754 F.2d 817 (9th Cir. 1985).
 - a. Unlike bribery, there is no requirement of a "corrupt" offer or acceptance. Students may ask an instructor to clarify this difference between bribery and illegal gratuities. This distinction in criminal intent between the two offenses generally turns on circumstantial evidence and is often obscure in particular cases; hence, the issue is often sent to the jury. One commentator [Strader, Understanding White Collar Crime, § 8.03 (2002)] summarizes the case law with these observations. First, while bribery must involve

a contemplated quid pro quo nexus between the bribe and the official act, this need not be proven to establish an illegal gratuity. Second, bribery necessarily begins with a scheme to influence future official action, while gratuity can be paid illegally even after the official act was already completed entirely uninfluenced by the later payment of the gratuity.

- b. The government must merely establish that something of value was given to a public official for or because of an official act performed or to be performed.
 - c. Agency ethics officers can provide specific guidance regarding gratuities. Students should be advised that every agency has an office that can advise them about ethics rules including gratuities.
6. Other considerations in charging this offense:
- a. Both the person offering the bribe and the person who accepts it are culpable for the offense.
 - b. Title 18 U.S.C. §201(b)(2) is violated even though the official who is offered a bribe is not corrupted or the object of the bribe cannot be attained.
 - c. United States v. Arroyo, 581 F.2d 649 (7th Cir. 1978). In order for the crime of bribery to be committed, it is not necessary that the public official actually have the power to perform the act that he promises in return for money. The public official must only represent that the money will be for the purpose of influencing the performance of some official act.
 - d. The term "something of value" has been broadly construed. In United States v. Gorman, 705 F.2d 1299, 1304-1305 (6th Cir. 1986), the term included a loan and a promise of a job. The court, after finding that the defendant could not have gotten the loan from a bank and that the offered job included a substantial raise, concluded that these items had value sufficient to sustain an illegal gratuity conviction.
7. The definition of public official:

- a. "The term 'public official' means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror."
- b. Public official has been broadly construed by the courts to include persons selected to be public officials, and a number of other related persons. It is clear that state and local government employees who are administering federal programs qualify as public officials.
- c. The term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed.
- d. The statute also prohibits bribes or gratuities to persons who are former public officials (presumably because of any remaining official influence they might have).
- e. The statute also prohibits bribes or gratuities to witnesses for their testimony.
- f. The reach of federal prosecution into the activities of state and local officials administering federal funds was expanded by the Supreme Court in United States v. Dixon, 465 U.S. 482 (1984) and by Congress with the passage of 18 U.S.C. § 666, "Theft or bribery concerning programs receiving federal funds."

II. FEDERAL FIREARMS VIOLATIONS

A. RAPPORT AND OPENING STATEMENT

1. All law enforcement officers face the possibility of encountering firearms on the job. This course provides a basic introduction to selected federal firearms laws. There are many federal firearms laws which this course does not address. Likewise, this course does not address agency-specific officer concerns, such as the ability to carry off-duty, the ability to carry personal weapons, etc.
2. Many states and municipalities have firearms laws which are more restrictive than federal law. Federal law enforcement officers should acquaint themselves with the firearms laws applicable in their jurisdiction.
3. During this course students will learn that machine guns, sawed-off weapons, and other extremely dangerous weapons can be legally possessed if strict legal requirements are met. However, officer safety is a paramount concern. The officer should always take steps to insure his safety and the safety of others before investigating to see if a weapon is legally possessed.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #6: Identify categories of individuals prohibited from possessing firearms.
- EPO #7: Identify procedures to initiate a firearms trace through the Bureau of Alcohol, Tobacco & Firearms.
- EPO #8: Identify the weapons listed in 18 U.S.C. §922(a)(4) which require registration with the Bureau of Alcohol, Tobacco & Firearms, and those weapons prohibited on a federal facility.

C. EPO #6: IDENTIFY CATEGORIES OF INDIVIDUALS PROHIBITED FROM POSSESSING FIREARMS.

1. A firearm is any weapon that will expel a projectile by explosive. This definition includes the frame or receiver of such weapon, a silencer or muffler, or any destructive device. 18 U.S.C. §921(a)(3). The definition does not include "antique" firearms (those manufactured prior to 1899), air-powered weapons like BB and pellet guns, black powder weapons and authentic replicas of antique firearms. 18 U.S.C. §921(a)(16).
2. Title 18 U.S.C. §922(g) prohibits certain individuals from knowingly [see 18 U.S.C. §924(a)(2)] "possessing in or affecting [interstate or foreign] commerce, any firearm or ammunition." Under 18 U.S.C. §922(g), it is unlawful for the following individuals to possess firearms.

- a. anyone “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.” This is referred to generically as a “convicted felon,” but does not include individuals convicted of:
 - 1) a Federal or State offense pertaining to antitrust violations, unfair trade practices or similar offenses relating to the regulation of business practices, or
 - 2) “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.” See 18 U.S.C. § 921(a)(20).
 - 3) “Any court” includes federal convictions, state convictions, and courts-martial. Foreign convictions are NOT included. Small v. United States, 125 S. Ct. 1752 (2005). This resolves an earlier split among the circuits regarding the issue of whether “any court” included foreign courts. Thus, even a foreign conviction punishable by imprisonment for a term exceeding one year cannot serve as a predicate offense for 18 U.S.C. § 922(g)(1).
- b. a “fugitive from justice”
 - 1) meaning “any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.” 18 U.S.C. § 921(a)(15)
- c. an unlawful user or addict of a controlled substance
- d. an individual who has been adjudicated a mental defective or who has been committed to a mental institution
 - 1) Note that individual must have been “adjudicated” mentally defective or “committed” to an institution. Voluntarily seeking treatment does not make an individual prohibited.
- e. an illegal alien or non-permanent resident alien, unless that alien has special permission to carry a firearm for hunting or sporting purposes or is authorized to carry a weapon as a foreign official. See 18 U.S.C. § 922(y)(2).
- f. an individual who has been dishonorably discharged from the Armed Forces
- g. anyone who has renounced his United States citizenship

- h. anyone subject to a court order restraining him from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner under these circumstances:
 - 1) there must have been a hearing for which the prohibited person received notice and a chance to participate;
 - 2) the restraining order must : (a) find the person a credible threat to physical safety of child or intimate partner, or (b) by its terms explicitly prohibit the use, attempted use, or threatened use of physical force against intimate partner or child that would be expected to cause injury.
- i. or, who has been convicted of a misdemeanor crime of domestic violence
 - 1) meaning a crime that “is a misdemeanor under Federal or State law” and “has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” 18 U.S.C. §921(a)(33)(A)
 - a) this provision is particularly controversial, since some law enforcement officers lost their jobs when this provision was added in 1996.
 - 2) A person is not considered convicted of a disqualifying offense unless they had:
 - a) right to counsel, and
 - b) in a case in which they were entitled to a jury, the opportunity to have a jury or make a knowing and intelligent waiver of the right to jury. See 18 U.S.C. § 921(a)(33)(B).
- 3. A person who receives a complete pardon or expungement of a felony or misdemeanor crime of domestic violence conviction is no longer considered convicted. However, if the pardon or expungement is qualified by the condition that the person may not possess firearms, then he is still prohibited from possessing firearms under federal law. See 18 U.S.C. § 921(a)(20) and 18

U.S.C. § 921(a)(33)(B)(ii).

4. INSTRUCTOR NOTE: Additionally, 18 U.S.C. §922(n) prohibits a person indicted for a crime punishable by imprisonment for more than one year from receiving, transporting or shipping a firearm.

NOTE: During the break, many students enjoy inspecting and dry-firing the weapons in the Display Kit. This is an excellent way to encourage student interest in the subject. The Instructor should encourage this practice.

D. EPO #7: IDENTIFY PROCEDURES TO INITIATE A FIREARMS TRACE THROUGH THE BUREAU OF ALCOHOL, TOBACCO & FIREARMS

1. The primary reason to trace a firearm through the Bureau of Alcohol, Tobacco & Firearms (ATF) is to connect a firearm to a specific suspect. An ATF trace should reveal the manufacturer, the importer if the weapon is foreign made, the wholesale distributor, the weapon dealer, and the first retail purchaser from the dealer. While possible, it is unlikely that subsequent transactions (either legal or illegal) were reported to ATF. Since many weapons used in criminal activity have been stolen and repeatedly changed hands, an ATF trace may provide relatively little information. However, it may provide leads to sources of weapons. For example, an ATF trace would indicate if an individual was legally buying a large number of guns in a state where they are readily available and transporting them for sale to an area where they are not available. Example: a criminal buying many guns in Georgia and takes them to New York City to sell illegally for profit.) Likewise, an individual possessing a stolen firearm might be linked to the theft of the firearm.
2. Gun manufacturers assign serial numbers to their firearms. The numbers themselves are not unique. It is quite possible that two different models of guns would have the same serial number. Therefore, the serial number alone is not enough to run a trace. In order to successfully run a trace, the ATF must be provided with the following:
 - a. Make
 - b. Model
 - c. Serial Number
 - d. Caliber or gauge
3. INSTRUCTOR NOTE: ATF started an internet-based tracing system in January 2005 called eTrace. Available to LEOs of

participating agencies and departments, eTrace has reduced the average response time to 8 business days. The new system also supports generating statistical reports (e.g., average time-to-crime for firearms in a given location) and database queries to detect patterns and trends.

E. EPO #8: IDENTIFY THE WEAPONS LISTED IN TITLE 18 U.S.C. § 922(A)(4) WHICH REQUIRE REGISTRATION WITH THE BUREAU OF ALCOHOL, TOBACCO & FIREARMS AND THOSE WEAPONS PROHIBITED ON A FEDERAL FACILITY

1. Weapons requiring BATF registration. Certain weapons are not illegal per se, but must be registered with ATF for their possession to be legal. These include short-barrel shotguns, short-barrel rifles, machine guns, silencers/mufflers, and destructive devices.
 - a. A short-barrel shotgun is a shotgun having a barrel less than 18 inches in length or an overall length of less than 26 inches. 18 U.S.C. §921(a)(6).
 - b. A short-barrel rifle is a rifle having a barrel less than 16 inches in length or an overall length of less than 26 inches. 18 U.S.C. §921(a)(8).
 - c. A machine gun is any firearm that fires more than one bullet with a single trigger pull.
 - d. A silencer or muffler is any device used to silence or quiet the report of a firearm. 18 U.S.C. §921(a)(24). This is not limited to high-tech pieces of equipment, but could include common items such as oil filters, potatoes, and plastic 2-liter bottles filled with industrial foam.
 - e. Destructive devices include bombs, grenades, rockets (with more than 4 oz. of propellant), missiles (with explosive charge more than one-quarter ounce), mines, or similar devices. The term also includes firearms with a bore greater than .50 caliber [except conventional shotguns]. 18 U.S.C. §921(a)(4).
2. If an officer sees a weapon which requires registration with ATF, the officer should always exercise safety precautions first and worry about checking the registration second. If any of these weapons are encountered on the street, it is extremely likely they are illegally possessed. While such weapons might be lawfully possessed in a home or business, it is still highly likely that the owner has not complied with the strict ATF requirements for possessing such weapons.
3. INSTRUCTOR NOTE: 26 U.S.C. § 5861 prohibits possession of such unregistered weapons. That statute also prohibits

transferring, receiving and making such a weapon. 26 U.S.C. § 5871 notes that such crimes are punishable by 10 years of imprisonment, and 26 U.S.C. § 5872 dictates forfeiture of such weapons and either their destruction, retention for federal purposes or resale to state or local governments.

4. Weapons prohibited in a federal facility. A "Federal facility" is "a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties." 18 U.S.C. §930(g)(1).
5. It is unlawful to knowingly bring a "dangerous weapon" onto a "Federal facility". Dangerous weapons include: any "weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length." 18 U.S.C. §930(g)(2). This is a very wide range of weapons. Law enforcement officers working on Federal facilities should understand that nearly any item which is used as a weapon or personal self-defense device is prohibited.
6. State, local and Federal law enforcement officers are exempt from this law while in the performance of their duties. However, many Federal facilities still require law enforcement officers to check their weapons. Law enforcement officers have no absolute right to carry their weapons on Federal facilities, and if required, must check their weapons.

F. EPO #9: IDENTIFY WHEN A PERSON MAY BE PROSECUTED FOR ASSISTING ANOTHER IN THE COMMISSION OF A CRIME, IN ACCORDANCE WITH TITLE 18 U.S.C. §§ 2-4.

1. Title 18 U.S.C. § 2(a). Title 18 U.S.C. § 2 is actually entitled "Principals." Pursuant to this statute, individuals who provide assistance to a principal either before or during the commission of a crime may be held criminally liable as if they themselves had committed the offense. The statute is actually broken into two (2) subsections. The first part of the statute, subsection §2(a), deals with "aiding and abetting" a crime, and reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

a. Liability of Defendant. It is important to remember that, if an individual is found guilty of being an "aider and abettor," he or she may be punished as if they had committed the crime

themselves (i.e., as if they themselves were the principal of the offense).

- b. The Elements of Aiding and Abetting. There are three (3) elements necessary to prove a crime under subsection § 2(a).
 - 1) Affirmative Act of Association. The statute requires that a defendant actually do something to assist in the commission of the crime.
 - a) Definition. An “affirmative act of association” has been defined as follows: “In order to aid and abet another to commit a crime, it is necessary that a defendant in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, and that he seek by his action to make it succeed.” United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938).
 - b) Timing. The affirmative act of association must occur either before or during the commission of the crime by the principal. If the act occurs after the commission of the crime, the defendant may be held liable as an “accessory after the fact,” discussed more below.
 - c) Mere Presence. The defendant is not required to be present at the time the crime is committed to be liable under § 2(a). Hume v. United States, 118 F. 689 (5th Cir. 1902), cert. denied, 189 U.S. 510 (1903). Further, mere presence at the scene of the crime, even in the presence of the principal, does not, standing alone, make an individual an aider and abettor. United States v. Williams, 341 U.S. 58 (1951).
 - 2) Knowledge. In addition to an affirmative act of association, the defendant must also have knowledge that he or she is assisting in the commission of a crime.
 - a) Detail Required. There is no requirement that the defendant know all of the details of the crime. Williams v. United States, 308 F.2d 664 (9th Cir. 1962). However, where an individual unknowingly provides assistance to a principal, a prosecution under § 2(a) will not lie.
 - b) Willful Blindness. Deliberate avoidance of

knowledge will not preclude a finding of knowledge. This occurs when a defendant asserts a lack of guilty knowledge, but the evidence supports an inference that he or she instead chose to intentionally avoid gaining knowledge about the circumstances surrounding their assistance in order to avoid liability. United States v. Gruenberg, 989 F.2d 971 (8th Cir. 1993).

- 3) Commission of an Offense Against the United States. In order to prosecute an individual for violating Title 18 U.S.C. 2(a), a crime must actually be committed. United States v. Provenzano, 334 F.2d 678 (3d Cir.), cert. denied, 379 U.S. 497 (1964).

- a) Conviction of Principal. A defendant may be convicted of violating 2(a) even though the person who actually committed the crime is never convicted, caught, or even identified. United States v. Untiedt, 493 F.2d 1056 (8th Cir.), cert. denied, 419 U.S. 862 (1974).
- b) Charging the Crime. When an individual is charged with aiding and abetting, the indictment need not specifically charge "aiding and abetting." United States v. Armstrong, 909 F.2d 1238 (9th Cir.), cert. denied, 498 U.S. 870 (1990). Because those who aid and abet a crime are held liable as the principal of the crime, the indictment would charge the defendant with the completed offense (e.g., bank robbery).

2. Title 18 U.S.C. § 2(b). The second subsection of the statute, § 2(b), addresses those individuals who intentionally cause another person to commit an offense against the United States. This subsection reads as follows:

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

- a. The Elements of "Causing." There are three (3) elements necessary to prove a crime under subsection § 2(b).
 - 1) An Act. The defendant must cause another to perform some act that, if directly performed by the defendant or another, would be a crime. United States v. Kelley, 395 F.2d 727 (2d Cir.), cert. denied,

393 U.S. 963 (1968).

- 2) Intentional. Further, the defendant must intentionally cause the other to perform the act.
- 3) Offense Against the United States. Finally, the defendant must cause the other to perform an act that is an offense against the United States.

b. Additional Concepts

- 1) Mere Presence. A prosecution under § 2(b) does not require that the defendant be present at the time the criminal act occurs.
- 2) Knowledge. Further, there is no requirement under § 2(b) that the defendant actually know the individual who commits the crime.
- 3) Conviction of Other Person. Finally, there is no requirement under § 2(b) that the person who actually committed the crime be convicted before the defendant can be convicted.
- 4) Charging. As with § 2(a), the defendant need not specifically be charged in the indictment with “causing” another to commit the crime, but only with the completed offense.

3. Title 18 U.S.C. § 3. Title 18 U.S.C. § 3 is directed at those individuals who provide assistance to the principal of a crime following the commission of the crime. The statute provides as follows:

“Whoever, knowing that an offense against the United States committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

- a. Liability of Defendant. Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or ... fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.”
- b. The Elements of Accessory After the Fact. There are three (3) elements necessary to prove a crime under § 3.
 - 1) Crime Must Be Committed. First, a crime must actually be committed before a defendant can be

found guilty of violating § 3. Whether the crime was a felony or misdemeanor is irrelevant.

- 2) Knowledge. Second, the defendant must have knowledge that a crime has been committed, although he or she need not know the precise nature of the crime. United States v. Balano, 618 F.2d 624 (10th Cir. 1979), cert. denied, 449 U.S. 840 (1980).
- 3) Assistance to the Principal. Third, the defendant must willfully assist the principal so as to prevent or hinder the apprehension, trial or punishment of the principal.

c. Additional Concepts

- 1) Timing of the Assistance. A violation of § 3 can occur only after the crime has been committed. Government of the Virgin Islands v. Aquino, 378 F.2d 540 (3d Cir. 1967). A defendant who provides assistance to the principal before the crime or while the crime is in progress is guilty as an aider and abettor. United States v. Barlow, 470 F.2d 1245 (D.C. Cir. 1972).
 - 2) Conviction of the Principal. As with aiding and abetting, the conviction of the principal is not required to convict the defendant of violating § 3. United States v. Walker, 415 F.2d 530 (9th Cir. 1969).
 - 3) Silence as Assistance. An individual's silence may not be used to prove that the individual is an accessory after the fact. However, where an individual provides false or misleading statements to law enforcement officers, those statements may be used to prove the offense.
4. Title 18 U.S.C. § 4. Title 18 U.S.C. § 4 is directed at those individuals who have knowledge of a felony offense and take affirmative steps to conceal the crime and fail to disclose their knowledge to criminal investigators. As stated by one court, "misprision of felony" is the concealment of a felony without giving any degree of help to the individual who actually committed the crime." United States v. Perlstein, 126 F.2d 789 (3d Cir.), cert. denied, 316 U.S. 678 (1942). The statute reads as follows:
- "Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both."

- a. The Elements of Misprision of Felony. There are four (4) elements necessary to prove a crime under § 4. Lancey v. United States, 356 F.2d 407 (9th Cir.), cert. denied, 385 U.S. 922 (1966).
- 1) Felony Committed. First, a felony must have been committed by the principal.
 - 2) Knowledge. Second, the defendant must have knowledge that the felony had been committed.
 - 3) Affirmative Act of Concealment. Third, the defendant must have performed either an affirmative act of concealment or an act that concealed the true nature of the crime.
 - 4) Failure to Disclose. Finally, the defendant must fail to disclose his knowledge of the crime as soon as possible.
 - a) Mere Failure to Report. A simple failure to report a crime does not, without an affirmative act of concealment, make one guilty of misprision of felony. However, where an individual lies to or misleads criminal investigators, this element may be met. United States v. Pittman, 527 F.2d 444 (4th Cir. 1975), cert. denied, 424 U.S. 923 (1976).
 - b) Self-Incrimination as a Defense. If the defendant is implicated in the crime committed by the principal, the right against compelled self-incrimination may provide a viable defense for a defendant accused of misprision of felony. Hoffman v. United States, 341 U.S. 479 (1951).
- b. Accessory After the Fact v. Misprision of Felony. There is a very close relationship between these two statutes. However, there are some differences that should be noted.
- 1) Maximum Punishment. The maximum possible punishments for both offenses are different.
 - 2) Felony Required. By statutory definition, misprision of felony can only occur when a felony crime has been committed by the principal. On the other hand, accessory after the fact may be charged regardless of the severity of the principal's offense.
 - 3) Assistance to Principal. A defendant accused of being an accessory after the fact must intentionally assist the principal of the offense, while one accused

of misprision of felony need only commit an act of concealment without necessarily intending to assist the principal.

- 4) Disclosure. Accessory after the fact does not require the defendant to disclose his knowledge as soon as possible, while misprision of felony does.

III. ENTRAPMENT/FALSE STATEMENTS

A. RAPPORT AND OPENING STATEMENT

1. The goal of a criminal investigator is a successful prosecution. The entrapment defense precludes the conviction of an individual if it was the government who caused him to commit the crime.
2. The Federal defense of entrapment poses two questions: (1) did the government induce the accused to commit the offense; (2) if so was the accused ready and willing without persuasion to commit the offense. On the first question the accused has the burden; on the second the government has it. The defendant is entitled to a jury instruction on entrapment if there is sufficient evidence from which a reasonable jury could find entrapment. Mathews v. United States, 485 U.S. 58 (1988).
3. While performing their duties, Federal officers frequently encounter individuals who give them false information. An individual making such a false statement is usually violating 18 U.S.C. § 1001. This statute can be an effective tool to punish the makers of material false statements.

INSTRUCTOR NOTE: False Statements, EPO #11, is also taught in the MBPTP and LMTP programs in conjunction with Theft/Embezzlement, EPO #24.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #10: Recognize when an inducement by the government is permitted or prohibited.
- EPO #11: Recognize when predisposition negates an apparent entrapment defense.
- EPO #12: Identify the elements of Title 18 U.S.C. § 1001.

C. EPO #10: RECOGNIZE WHEN AN INDUCEMENT BY THE GOVERNMENT IS PERMITTED OR PROHIBITED.

1. What is meant by "Entrapment"?
 - a. Entrapment is the act of government officers or their agents (e.g., informants) inducing a person to commit a crime not contemplated by that person, for the purpose of prosecuting that individual.
 - b. It is the conception and planning of an offense by officers or

their agents and their procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer/agent. United States v. Russell, 411 U.S. 423 (1973).

- c. Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit the criminal act, and then induce commission of the crime so that the government may prosecute. Sorrells v. United States, 287 U.S. 435 (1932).

2. The Entrapment Defense

- a. Entrapment is an "affirmative" defense. The defendant is entitled to an entrapment instruction whenever there is sufficient evidence from which a reasonable jury could find entrapment. The question of entrapment is one for the jury, rather than for the judge. Mathews v. United States, 485 U.S. 58 (1988).
- b. The Supreme Court has held that even if the defendant denies one or more elements of the charge he is still entitled to the entrapment instruction if there is sufficient evidence from which a reasonable jury could find entrapment. Mathews v. United States, 485 U.S. 58 (1988).
- c. Thus, a defendant can raise entrapment even if this is inconsistent with his other defenses. Mathews v. United States, 485 U.S. 58 (1988).

3. Views of Entrapment

- a. Objective view: the emphasis is on police conduct rather than the defendant's state of mind.
- b. Subjective view: the critical factor in the entrapment equation is the state of mind of the defendant. At issue is the defendant's predisposition to commit the offense charged. The question is whether the defendant, before contact with law enforcement officers or their agents, already possessed the state of mind to commit the offense charged. Once the defendant has raised the entrapment defense, the prosecution must negate it by establishing predisposition beyond a reasonable doubt. United States v. Navarro, 737 F.2d 625, 635 (7th Cir. 1984), cert. denied, 469 U.S. (1984). If defendant's predisposition is established, she would not be entrapped. Sorrells v. United States, 287 U.S. 435 (1932). The court in Sorrells barely upheld the subjective view. Twenty-six years later the Supreme Court upheld the subjective view and criticized the objective view as being unduly restrictive upon the prosecution. Sherman v. United

States, 356 U.S. 369 (1958). The Supreme Court established the subjective view as the correct one to be used in all Federal Courts. Hampton v. U.S., 425 U.S. 484 (1976). INSTRUCTOR NOTE: Sorrells and Sherman, were 5-4 decisions and Hampton was a 5-3 decision.

4. Due Process Argument (Objective Entrapment)

- a. Some lower courts have observed that government conduct can be so outrageous that due process principles would absolutely bar the Government from obtaining a conviction. United States v. Twigg, 588 F.2d 373 (3rd Cir. 1978); United States v. Nolan-Cooper, 155 F.3d 221 (3d Cir.1998) (government agent had sex with defendant); United States v. Russell, 459 F.2d 671(9th Cir.1972) (government supplies precursor drug not available to the public). In United States v. Chisum, 312 F.Supp. 1307 (C.D.Cal. 1970), the indictment was dismissed when the defendant was supplied counterfeit currency by a government agent and then indicted for receiving counterfeit currency with the intent to pass as genuine.
- b. For example, threatening to injure the children of a target unless he committed a crime would cross this line and violate the Due Process Clause. Even if the target were predisposed to commit the crime, the Government's behavior would render the case non-prosecutable. If a prosecutor were foolish enough to proceed, the behavior would almost certainly lead to acquittal and a grave loss of public confidence in federal law enforcement. Obviously, such outrageous tactics are neither planned nor executed by professional federal law enforcement officers. But inadequately-controlled informants and other agents of the government can generate the grounds for this defense if their methods to develop cases become outrageously overzealous.

5. Inducement

- a. In general:
 - 1) There is a split of authority among the Circuits as to the amount of pressure that must be exerted by the government to form the basis for a properly supported entrapment instruction.
 - 2) Without some evidence of pressure exerted by the government, no instruction on the defense need be given.
- b. The Second Circuit defines inducement as "soliciting,

proposing, initiating, preaching, or suggesting the commission of the offense charged. United States v. Dunn, 779 F.2d 157,158 (2d Cir.1985) *quoting* United States v. Sherman, 200 F.2d 880,883 (2d Cir.1952) (L.Hand, J). Inducement refers to “the government’s initiation of the crime and not to the degree of pressure exerted.”

- c. The First Circuit rejected this definition by distinguishing between solicitation and inducement. Mere solicitation would fail to meet the threshold criterion requiring the government to establish predisposition. Inducement requires evidence that shows the defendant was not ready to commit the crime charged. The Tenth Circuit also appears to require more than initiation or solicitation. At the far end of the spectrum, the Eleventh Circuit has held that the defendant must demonstrate not merely inducement or suggestion but an element of persuasion or mild coercion. United States v. Andrews, 765 F.2d 1491, 1499 (11th Cir.1985). *Cf.* United States v. Romano, 879 F.2d 1056 (2d Cir. 1989).
 - d. If there is sufficient evidence of inducement to warrant an instruction, then the government must establish that the defendant was predisposed to commit the offense charged beyond a reasonable doubt. The sole issue would be whether the government carried its burden of proving the defendant was predisposed to violate the law *before* the government intervened. Jacobson v. United States, 503 U.S. 540 (1992).
 - e. Inducement by law enforcement officers may take many forms including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based upon need, sympathy or friendship.
6. Permitted Inducements. Some inducements are unlikely to tempt a law-abiding person to commit a crime. Such inducements are so mild that courts generally condone their use. Some examples:
- a. Use of deception: United States v. Engler, 806 F.2d 425 (3d Cir. 1986); United States v. Manning, 787 F.2d 431 (8th Cir. 1986).
 - b. Use of decoys (e.g., metal deer to catch poachers).
 - c. Payment of reasonable amount of money. Note that in the ABSCAM cases a \$50,000 bribe was held to be reasonable as was a proposed \$70,000 profit for Senator Williams.
 - d. Assistance in facilitating the commission of the crime by providing equipment or supplies (e.g., paper for

counterfeiting) or products (e.g., chemical for drug manufacture).

7. "Prohibited" inducements. Some inducements are so coercive that their use jeopardizes any chance of successful prosecution. These may create at least the appearance-- and sometimes the reality-- of outright duress. Threats against the well-being of the target's family in order to convince the target to agree to the proposed commission of a crime are one example. Other examples include:
 - a. Extreme appeals to the sympathy or emotions of the person solicited. The Sherman case, taken to extremes, suggests an example.
 - b. Offers of substantial, unreasonable amounts of money to an impoverished or financially desperate target. United States v. Dion, 762 F.2d 674 (8th Cir. 1985).
 - c. Continual pressure on the target, such as repeated phone calls, visits, requests, etc.
 - d. Repeated insistence, badgering or soliciting. Jacobson v. United States, 503 U.S. 540 (1992).
 - e. Violent demonstrations, threats, and animal cruelty. United States v. Skarie, 971 F.2d 317 (9th Cir. 1992) (impaling live chicken).
8. Inducements by middlemen and informants:
 - a. Private Inducement: Entrapment occurs only when the criminal conduct was the product of the activity of law enforcement officials. This means that entrapment cannot result from the inducements of a private citizen but must be the product of conduct by governmental agents.
 - b. Inducements offered by Government Informers: On the other hand, when non-Government persons are recruited and then targeted against suspects by LEO, their activities will amount to Government inducement. In some cases, the private party is clearly an "agent" of the Government. Sometimes, however, the relationship between LEO and private parties is hazy. Whether the private party's activities constitute government inducement in such cases will depend on factors like:
 - 1) The extent of direction and supervision provided by LEO to the private party's actions.
 - 2) The degree to which targets are pre-selected by LEO.
 - 3) The history of similar prior operations by the private party and LEO.

- 4) The extent to which operational resources are made available to the private party by LEO.
- 5) The degree to which a successful operation results in some tangible reward to the private party from LEO.

D. EPO #11: DETERMINE WHEN PREDISPOSITION NEGATES AN APPARENT ENTRAPMENT DEFENSE.

1. Predisposition in general:
 - a. Where a person already has a readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is not entrapment.
 - b. By predisposed, it is not meant that the defendant on his own, under some conceivable set of circumstances, might commit the crime, but that he is presently ready and willing to commit the crime. Predisposition is a state of mind that readily responds to the opportunity furnished by the officer or his agent to commit the forbidden act for which the accused is charged.
 - c. If there is evidence of inducement considered sufficient to warrant an instruction, then the government must establish that the defendant was predisposed to commit the offense charged beyond a reasonable doubt. The sole issue would be whether the government carried its burden of proving the defendant was predisposed to violate the law *before* the government intervened. Jacobson v. United States, 503 U.S. 540 (1992).
 - d. Use of other crimes evidence. Generally, evidence of earlier crimes or wrongdoing by the defendant is inadmissible in his criminal trial. Rule 404(b) F.R.E..
 - 1) But Rule 404(b) allows the use of evidence of "other crimes or acts" to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Courts have stated that the government may use such evidence to show predisposition.
 - e. Use of Prior Convictions / Prior Arrests / Prior Criminal Activity:
 - 1) The courts have permitted the use of prior criminal activity in order to prove the predisposition of the defendant to commit the charged offense.
 - 2) Proof of prior illegal conduct is relevant to the issue of

a defendant's predisposition to commit a crime. The issue is whether the defendant's involvement in a prior criminal act is sufficiently similar to the act charged in the indictment. If this requirement has been satisfied, then past acts leading up to the criminal activity are admissible to show knowledge, motive, and intent on the part of the defendant to participate in the crime charged.

f. Use of Post-Crime Criminal Activity:

- 1) Predisposition rests on a defendant's mental state prior to commission of the crime. But that mental state can be shown by what the defendant did or said either before or after commission of the crime charged. Thus, evidence of continued drug dealing by a defendant after his indictment for earlier drug deals was admissible to prove his predisposition once he contended that he had been entrapped. United States v. Moschiano, 695 F.2d 236, 243-244. (7th Cir. 1982).
- 2) A statement made by the defendant to an undercover agent that he would be willing to get more drugs for the agent ("if you need more I'll be here") was admissible to show his predisposition. United States v. Jenkins, 480 F.2d 1198, 1200 (5th Cir. 1973), cert. denied, 414 U.S. 913.
- 3) "The primary thrust of these authorities is that evidence of a similar offense, committed in close proximity of time, may be corroborative of a prior or subsequent offense. Although evidence introduced in a criminal trial generally should relate only to the specific offense charged, prior or subsequent incidents may be introduced to establish that a defendant possessed the requisite knowledge or that there is a consistent pattern, scheme of operations, or similarity of method." United States v. Rodriguez, 474 F.2d 587, 590 (5th Cir. 1973).
- 4) "The question in each case is not whether the events at issue occurred before, during or after commission of the alleged offense. The question is whether the events are relevant to and probative of the defendant's willingness to commit the crime charged when first solicited to do so by a government agent." United States v. Brown, 567 F.2d 119, 120 (D.C. Cir. 1977).

- g. Use of Statements to establish predisposition:
 - 1) Conversations with the defendant can be very important during an undercover investigation in proving his predisposition. Whenever possible, encourage the defendant to talk or brag about his criminal enterprise.
 - 2) In United States v. Hill, 626 F.2d 1301, 1302 (5th Cir. 1980), Hill boasted to the undercover agent "of his long-time involvement in procuring and selling stolen vehicles, of the quality of his wares, and the reliability of his operation, and of his past success in avoiding prosecution."
- h. Defendant's ready acceptance:
 - 1) Courts have placed heavy emphasis on the defendant's ready acceptance of the offered inducement. In United States v. Reynoso-Ulloa, 548 F.2d 1329, 1336 (9th Cir. 1977) the court said "...while none of the factors alone indicates either the presence or absence of predisposition, the most important factor...is whether the defendant evidenced reluctance to engage in criminal activity which was overcome by repeated Government inducement."
 - 2) In other cases, the defendant's predisposition was proven by:
 - 3) an "unbridled enthusiasm for his "new career". United States v. Anderton, 679 F.2d 1199, 1201 (5th Cir. 1982).
 - 4) "I'm no Boy Scout." United States v. Myers, 692 F.2d 823, 836 (2d Cir. 1982) (one of the Abscam cases).
 - 5) A "ready response" reveals that the defendant was a willing participant and not one that had merely succumbed to the seduction of the LEO's inducement.

E. EPO #12: IDENTIFY WHEN A FALSE STATEMENT VIOLATES TITLE 18 U.S.C. § 1001.

- 1. The Statute. Title 18 U.S.C. § 1001 provides as follows:
 - a. Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- 1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - 2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - 3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title or imprisoned not more than five years or, if the offense involves international or domestic terrorism, fined or imprisoned 8 years, or both.*
- b. Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.
 - c. With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to...
 - 1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
 - 2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.
2. Elements of Title 18 U.S.C. § 1001. The following elements must be proven in order to establish that a violation of § 1001 has occurred:
 - a. Whoever ...
 - b. Regarding certain Federal matters...
 - c. Knowingly and willfully...
 - d. Makes a false material statement, or makes or uses a false writing or document knowing it to contain a material false statement, or conceals or covers up a material fact...

shall be fined/imprisoned up to five years.
 3. "Regarding Certain Federal Matters." False statements (oral or written) which are made in a matter within the jurisdiction of the executive, legislative, or judicial branches of the United States are

violations of § 1001. Courts have also upheld convictions under this section where individuals have made false statements to state agencies that are recipients of Federal funds.

- a. The False Statements Accountability Act of 1996. Title 18 U.S.C. § 1001 applies to all three branches of the Federal government. In Hubbard v. United States, 514 U.S. 695 (1995), the Supreme Court had held that a Federal court was neither a “department,” nor an “agency,” within the meaning of § 1001. The Court also noted that these terms applied to Executive Branch agencies alone, as was originally intended. However, the 1996 Act overruled the Court’s interpretation in Hubbard, with the following limitations:
 - 1) That section (a) of the Act does not apply to a party or their counsel during a judicial proceeding for any statements, representations, writings or documents submitted by them to a judge or magistrate in that proceeding. Thus, non-parties could still be prosecuted for false statements made during a judicial proceeding, as could a party for false submissions made during administrative housekeeping matters, such as submissions to the Office of Probation, bar membership admissions or other judicial entities (the Clerk of the Court, for example).
 - 2) That section (a) of the Act shall apply to matters within the jurisdiction of the legislative branch only if they relate to administrative matters or congressional investigations conducted consistent with applicable congressional rules.
- b. Administrative matters would include such things as financial disclosure filings, claims to the House Finance Office, and submissions to other legislative entities, such as the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of the Inspector General of the House and the Capitol Police.
- c. Duly authorized investigations or reviews are those activities initiated through a formal action of a House or Senate committee, or the whole House or Senate. Inquiries by members of Congress or their staff would not be a duly authorized investigation under § 1001.
- d. Examples. The following examples are provided for illustrative purposes.
 - 1) United States v. Sheets, 65 F.3d 752 (8th Cir. 1995).

Following an on-the-job dispute with fellow employee Quinn Hancock, Sheets filed a false amended tax return in Hancock's name. The amended return reported \$390,000 in unreported gambling revenue, which subjected Hancock to an additional tax liability of \$103,697.90. After Hancock eventually convinced the IRS that the claim was bogus, the IRS focused on Sheets. Sheets denied filing the amended tax return, furnished a disguised handwriting sample, and altered the typewriter he used to type the return before turning it over to the police. Sheets pled guilty to a two-count indictment for his false statements to the IRS.

- 2) United States v. Haggard, 41 F.3d 1320 (9th Cir. 1994). Several years after an 8-year-old girl was abducted near her home in Hayward, California, Haggard contacted the FBI and claimed to know of the location of her body and the identity of her assailant. Haggard was serving time in Indiana for burglary. During several interviews with the FBI, Haggard recounted his story, and the FBI declined to pursue the case. Upset, Haggard wrote to the *San Francisco Chronicle*, claiming to know the location of her body, her assailant's identity, and wanting to put the child's parents at ease and allow them to give the child a proper burial. The FBI called his bluff, and brought him to testify before a grand jury. The next day, Haggard led the FBI on a 4-hour, 100-mile wild goose chase around the Bay area. At the end of the trip, Haggard admitted he made the whole thing up, purportedly to seek favorable treatment with the Indiana Parole Board. As expected, when his hoax was revealed, the impact on the family of the missing girl was traumatic. After being indicted on 11 Federal counts, Haggard pleaded guilty to obstructing an FBI investigation, two counts of false statements to the FBI, obstructing justice by giving false testimony to a grand jury, and two counts of false statements to a grand jury. He received 78 months imprisonment, and a nominal fine and restitution.
- 3) United States v. Massey, 550 F.2d 300 (5th Cir. 1977). The defendant called the FBI on the telephone and later met with an agent. Massey told the agent that he knew of a plot to kill President Ford and Senator Ted Kennedy. The information was unsworn, oral and unrecorded. The FBI commenced an

investigation and later discovered that Massey had lied. He was convicted of violating § 1001.

- 4) United States v. Lambert, 501 F.2d 943 (5th Cir. 1974)(en banc), abrogated by United States v. Rodriguez-Rios, 14 F.3d 1040 (5th Cir. 1994)(en banc) as to “exculpatory no” doctrine. Lambert visited the Tampa FBI office and signed a written statement falsely stating that two Tampa Police Officers had arrested him without probable cause and had physically abused him. The FBI conducted an investigation and discovered the charge was an attempt to get back at the officers for his arrest. He was convicted of violating § 1001.
 - 5) United States v. Adler, 380 F.2d 917 (2d Cir. 1967), cert. denied, 389 U.S. 1006 (1967). The defendant, a contractor at a Navy submarine base, voluntarily visited the FBI and orally stated that government officials were bribing him. The FBI commenced an investigation and later discovered, and Adler admitted, that he had falsely incriminated the government officials because the officials were too tough on him. He was convicted of violating § 1001.
 - 6) United States v. Herring, 916 F.2d 1543 (11th Cir. 1990). The defendant falsely applied for and received unemployment benefits from Georgia. He claimed the federal government lacked jurisdiction to prosecute under § 1001. Georgia received federal dollars to help pay the administrative costs of its unemployment program and the program was overseen by the U.S. Secretary of Labor. Therefore, jurisdiction was appropriate and the defendant’s conviction upheld.
4. Statements Regarding Criminal Acts. False statements made to a Federal agency by a “witness/informant” about alleged criminal acts are within the jurisdiction of the agency.
- a. United States v. Shanks, 608 F.2d 73 (2d Cir. 1979), cert. denied, 444 U.S. 1048 (1980). An employee (the eventual defendant) made deliberate false statements to investigators that briefly focused Secret Service attention on an innocent employee.
 - b. Sica v. United States, 325 F.2d 831 (9th Cir. 1963), cert. denied, 376 U.S. 952 (1964). The IRS was investigating the tax liability of Cohen, who was involved in the cigarette vending machine business in the Los Angeles area. There was stiff competition between the vending machine

companies. The IRS was able to prove that Cohen gave Sica \$5,000 in cash for his services in locating sites for the vending machines. The IRS interviewed Sica and informed him it was investigating Cohen. Sica denied in writing that he had ever accepted money from Cohen. Sica was later convicted of violating § 1001. Also, note the similarity between this violation by a witness and a violation of Title 18 U.S.C. § 4 (Misprision of Felony). The defendant gave a written false statement to the FBI intended to conceal her husband's participation in a bank robbery. United States v. Pittman, 527 F.2d 444 (4th Cir. 1975), cert. denied, 424 U.S. 923 (1976).

5. Statements Regarding Regulatory Functions. False statements made to an agency regarding the regulatory functions of a Federal department or agency.

- a. United States v. Seay, 718 F.2d 1279 (4th Cir. 1983), cert. denied, 467 U.S. 1226 (1984). The defendant's husband died in 1950 while on active duty with the U.S. Army. She received benefits from the FECA (Federal Employees Compensation Act) for herself and four children. The defendant received forms stating that she would receive compensation as a widower until she died or remarried. In 1962, she moved in with Mr. Coke Seay and they lived together for 19 years. During that time, she changed her church membership and they both joined the same church as Mr. and Mrs. Coke Seay. They appeared in the church pictorial directory as "Mr. and Mrs. Coke Seay." The minister later testified at trial that the church members considered them to be married. Each year the Department of Labor sent the defendant a form, which she signed and failed to mention she was married. When the defendant discovered she was being investigated for making false statements, she moved out of Coke Seay's house and rejoined her old church. At trial the government was able to prove, that they were married under the common law and therefore she had lied on the forms sent to her by a Federal agency. She was convicted of violating § 1001.
- b. United States v. Poindexter, 951 F.2d 369 (D.C. Cir. 1991), cert. denied, 506 U.S. 1021 (1992). Poindexter was convicted on five felony counts based on the part he played as National Security Advisor in the "Iran/Contra" affair. During his one year in that position, Poindexter made assurances that national policy was in accordance with the House Resolution concerning National Security Council assistance to the Contras, while the opposite was true. He

also arranged for Oliver North to testify to those assurances and destroyed a Presidential “finding” that authorized the exchange of missiles to Iran in return for the release of hostages. He also falsely testified before the House Intelligence Committee concerning his knowledge of the missile shipments from Israel to Iran. The convictions were eventually overturned based on the immunity issues arising from his and Oliver North’s testimony before the Congress United States v. North, 910 F.2d 843 (North I), *modified*, 920 F.2d 940 (D.C. Cir. 1990)(North II), cert. denied, 500 U.S. 941 (1991).

6. **Knowingly and Willfully – Intent.** To be a violation under § 1001, the statement must be one that is capable of affecting the exercise of a governmental function. The intent must be to deceive or to mislead and done knowingly and willfully. It is not required that the intent be to defraud. Examples include:
 - a. False certifications to GSA for nonconforming plastic bags. Company president ordered employees to short GSA, but did not personally sign certification statements. United States v. Fairchild, 990 F.2d 1139 (9th Cir. 1993), cert. denied, 510 U.S. 898 (1993).
 - b. False statements and documents sent to the IRS concerning a fraudulent land transaction were not spontaneous, emotional disclaimers, but were calculated and deliberately intended to influence the IRS; and if Duerr had not provided the information concerning the land transactions, the IRS would not have pursued the issue. United States v. Steele, 933 F.2d 1313 (6th Cir. 1991), cert. denied, 502 U.S. 909 (1991).
 - c. Accountant produced and gave to IRS auditor a charitable deduction he stated he had failed to file in previous tax year. Deduction was later proved false. United States v. Fern, 696 F.2d 1269 (11th Cir. 1983).
 - d. A defendant who deliberately avoids reading a form he is signing cannot avoid criminal prosecution for false statements contained on the form. By signing the form and not reading it the defendant acted with “reckless disregard of the truth,” which has been held to satisfy the requirement of § 1001. United States v. Puente, 982 F.2d 156 (5th Cir. 1993).
7. **Makes a False Material Statement or Conceals or Covers up a Material Fact.** The false statement made by the defendant must be “material.” The materiality of a statement is a mixed question of law and fact, and is one that should be decided by the jury. As

described by the Supreme Court:

"[T]he statement must have a natural tendency to *influence, or be capable of influencing, the decision of the decision-making body to which it was addressed*. The Constitution gives the criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged. The trial judge's refusal to allow the jury to pass on the 'materiality' of Gaudin's false statements infringed that right." United States v. Gaudin, 515 U.S. 506 (1995).

- a. Oath or Affirmation. Under § 1001, a false statement is not required to be under oath or affirmation. See United States v. Poindexter, 951 F.2d 369 (D.C. Cir. 1991).
- b. Form of the Statement. The false statement can be oral or written.
 - 1) United States v. Moore, 27 F.3d 969 (4th Cir. 1994). Federal agents were investigating bank fraud by Moore and others. Moore was being interviewed by an FBI agent, a postal inspector, and two Assistant U.S. Attorneys where he denied his part in the preparation of false tax returns used by his client to obtain bank loans. Moore not only denied preparing the documents, but went on to say that he had not prepared any tax forms for the client, denied the handwriting on the form was his, but admitted the handwriting was similar to his. Moore then stated that he had never used the type of form that was being questioned.
 - 2) United States v. Barr, 963 F.2d 641 (3rd Cir. 1992). Barr served as an Assistant to the Attorney General in Washington, D.C. for nine months. On Barr's SF-171 and SF-86, he answered "no" to questions concerning the use or possession of marijuana, narcotics, hallucinogenic, or other dangerous or illegal drugs. He was interviewed by the FBI as part of the security clearance procedure. After Barr resigned from his position, it was learned that Barr had used cocaine several times during the time period he had answered "no" to use of drugs in the SF-171, SF-86, and the FBI interview. He had also used cocaine while employed with the Attorney General. Barr was convicted of false statements and drug possession.
 - 3) United States v. Berisha, 925 F.2d 791. (5th Cir. 1991). Berisha was preparing to board an international flight from Dallas - Ft. Worth when a

customs inspector approached him and asked him if he was carrying more than \$10,000. Berisha twice stated he only had \$8,000 with him. The inspector later observed Berisha attempt to pass a roll of currency to a companion. The total amount of currency possessed by Berisha was over \$17,000. He was convicted of failing to report the currency and false statements.

8. The “Exculpatory No.” At one time, some circuits held that false “exculpatory no” statements made by a suspect to agents in a criminal investigation were not a violation of § 1001. An “exculpatory no” statement is a statement in which the suspect merely denies that he is guilty of the crime in which he is a suspect. Even if the statement was untrue (i.e., he did in fact commit the criminal act), such a statement could not be charged under § 1001. The leading decision of the “exculpatory no” doctrine originated from the Fifth Circuit in Paterno v. United States, 311 F.2d 298 (5th Cir. 1962), abrogated by United States v. Rodriguez-Rios, 14 F.3d 1040 (5th Cir. 1994)(en banc). Nevertheless, the United States Supreme Court put the “exculpatory no” issue to rest when it decided United States v. Brogan, 522 U.S. 398 (1998). In Brogan, the Court held that the plain language of § 1001 did not support any exception for an “exculpatory no” statement. The Court made it clear that, “[b]y its terms, § 1001 covers ‘any’ false statement...of whatever kind...including the use of the word ‘no’ in response to a question.” Justice Scalia emphasized that “...the Fifth Amendment does not confer a privilege to lie,” language that had been used by the Fifth Circuit in Rodriguez-Rios.
 - a. False “exculpatory no” statements made regarding an administrative or regulatory investigation never fell within the exception to §1001. False statements made to Federal investigators that relate to Federal regulatory functions of a department or agency can form the basis for Federal prosecution under § 1001. See United States v. Barr, 963 F.2d 641 (3rd Cir. 1992)(false entries on SF-171 and SF-86 for employment), and United States v. Berisha, 925 F.2d 791 (5th Cir. 1991)(false entry on Customs currency reporting form).
 - b. Congress addressed the “false exculpatory no” doctrine in the False Statements Accountability Act of 1996, by implicitly applying the doctrine in judicial proceedings where statements and other submissions to the court are made by the defendant or defendant’s counsel. The Department of Justice was concerned that adding any other proviso ending or extending the doctrine might delay the rest of the Act’s

passage and invite new judicial interpretation.

9. Miscellaneous Statutes Related to § 1001:
 - a. Title 2 U.S.C. § 192 (Contempt of Congress).
 - b. Title 18 U.S.C. § 4 (Misprision of Felony).
 - c. Title 18 U.S.C. § 287 (False, Fictitious or Fraudulent Claims).
 - d. Title 18 U.S.C. § 1002 (Possession of False Papers to Defraud the United States).
 - e. Title 18 U.S.C. § 1005 (Bank Entries, Reports and Transactions).
 - f. Title 18 U.S.C. § 1015 (Naturalization, Citizenship, or Alien Registry).
 - g. Title 18 U.S.C. § 1505 (Obstruction of Proceedings Before Departments, Agencies, and Committees).
 - h. Title 18 U.S.C. § 1621 (Perjury).
 - i. Title 18 U.S.C. § 1622 (Subornation of Perjury).
 - j. Title 18 U.S.C. § 1623 (False Declarations Before Grand Jury or Court).
 - k. If the false statement violates § 1001 and another statute (e.g., Title 26 U.S.C. § 7207 (False Statements to an IRS Agent), the prosecutor may choose § 1001, even if the penalties are more severe.

IV. CONSPIRACY / PARTIES

A. RAPPORT AND OPENING STATEMENT

1. Check to see that students have text. Explain that there are various conspiracy statutes in the United States Code (U.S.C.), but that this course will cover only the general criminal conspiracy statute, codified at Title 18 U.S.C. § 371.
2. The Supreme Court has often referred to the crime of conspiracy as “a partnership in crime.” United States v. Socony-Vacuum Oil Co., Inc., 310 U.S. 510 (1940). As such, each conspirator, like a business partnership, is liable for virtually all acts and admissions of any co-conspirators.
3. The crime of conspiracy was created because of the inherent dangers posed to society when two or more individuals deliberately plot to violate the law. The Supreme Court has remarked on the dangers of a criminal conspiracy:

“It involves the deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered.” United States v. Rabinowich, 238 U.S. 78 (1915).
4. The general approach to conducting a conspiracy investigation is to identify the members within the organization along with their respective roles for achieving the criminal objectives. Criminals attempt to conceal their plans and avoid detection so recruiting and developing witnesses is critical to any conspiracy investigation. Investigators will need to locate and obtain evidence to corroborate witnesses and support the theory of the case that the defendants were acting together in agreement, toward a common criminal objective.
5. Also explain to the students that a person who commits a crime is called the “principal” of the offense. However, a crime may involve persons who assist the one who actually performed the criminal act. Additionally, the Federal statute pertaining to “Principals” (Title 18 U.S.C. § 2) contains a subsection concerning those who “cause” a crime to be committed. Still others may be involved in assisting the principal in some manner after the crime has been committed. These individuals are referred to as “accessories after the fact.” Finally, other individuals may have knowledge of a Federal crime, and commit an act that “conceals” the true nature of the crime. These individuals may be guilty of “misprision of felony.”
6. The General Federal Conspiracy Statute. Title 18 U.S.C. § 371

reads as follows:

- a. "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one of more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.
 - b. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.
7. The Importance of the Statute. Title 18 U.S.C. § 371 is a valuable tool for criminal investigators, and can often be used to great advantage. Nonetheless, many agents, investigators, and prosecutors do not take advantage of its ready availability.
- a. Pro-Active. Because the statute is pro-active in nature, criminals can be apprehended prior to any substantive criminal offense being committed (e.g., before the bank robbery attempt). United States v. Feola, 420 U.S. 671 (1975).
 - b. Peripheral Helpers. Under the conspiracy statute, persons who could not be convicted of violating Title 18 U.S.C. § 2 (Principals) because a crime was never actually consummated may still be caught in the web of a conspiracy.
 - c. Insulated Leaders. In many criminal organizations, the leaders insulate themselves from those members whose actions are more visible, thus making them less likely to get caught. The law of conspiracy provides a method to reach beyond the visible layer and immobilize the entire organization.
 - d. Doctrine of Merger. The conspiracy to commit a crime is a separate and distinct offense from the crime being planned and does not merge with any completed crime. Pinkerton v. United States, 328 U.S. 640 (1946). Accordingly, a defendant may be convicted and sentenced both for conspiracy to commit a crime and for the substantive crime itself. Even if the same act established the facts for both offenses, it is not double jeopardy.
 - e. Inconsistent Verdicts. The law recognizes that inconsistent verdicts are often returned in criminal cases. The crime of conspiracy increases the chance that a defendant will be convicted of at least one charge. Thus, even when a defendant is acquitted of the substantive crime, he or she

may still be convicted of the conspiracy charge. United States v. Hughes Aircraft Co., 20 F.3d 974 (9th Cir.), cert. denied, 513 U.S. 987 (1994). Alternatively, an individual may be convicted of the substantive offense, but acquitted of the conspiracy charge. United States v. Stevens, 909 F.2d 431 (11th Cir. 1990).

8. The Elements of Conspiracy. The crime of conspiracy under Title 18 U.S.C. § 371 has five (5) elements.
 - a. Two or More Persons ...
 - b. Intentionally ...
 - c. Agree ...
 - d. To Violate Federal Law or Defraud the United States Government ... and
 - e. Commit An Overt Act In Furtherance Thereof.
9. Completion of the Conspiracy. When all of the above elements are present, the conspiracy is said to be COMPLETE. This does not mean that the conspiracy is finished, only that all the elements for a chargeable offense are now present.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #13: Identify how many persons are needed to form a conspiracy.
- EPO #14: Identify when knowledge and intent are sufficient to constitute a conspiracy.
- EPO #15: Recognize an agreement and its functions according to the provisions of Title 18 U.S.C. § 371.
- EPO #16: Recognize the function of an overt act in the crime of conspiracy.
- EPO #17: Identify when a co-conspirator's statement may be used during the prosecution of a conspiracy.
- EPO #18: Identify the limits of the withdrawer's or late joiner's criminal liability.

C. EPO #13: IDENTIFY HOW MANY PERSONS ARE NEEDED TO FORM A CONSPIRACY

1. Two or More Persons. The plain language of Title 18 U.S.C. § 371 requires the participation of "two or more persons." The more difficult question to be answered is not how many persons are required for the crime, but who can those persons be. When investigating a conspiracy case, it is particularly important to know who cannot be considered to be a conspirator to complete the two person requirement.

- a. Undercover Agents. Under § 371, an agreement between only two persons, one of whom is an undercover government agent, cannot support a conspiracy conviction, in that the requisite plurality is not present. United States v. Pennell, 737 F.2d 521 (6th Cir. 1984), cert. denied, 469 U.S. 1158 (1985).
- b. Confidential Informants. Informants working for the government are considered as an extension of the government, and, like undercover agents, cannot be counted as a person to satisfy the two-person requirement. An agreement between the defendant and at least one other non-government affiliated party must be proved.
- c. Partnerships. Unlike corporations, a partnership may not be named in the indictment as a conspirator, even where the conspiracy was intended to benefit the partnership. Nonetheless, the individual partners may be indicted for their participation in the conspiracy.

In addition, there are several categories of individuals who may or may not be considered as one of the necessary two or more persons.

- d. Mentally Ill Persons. Similar to undercover agents, if a mentally ill individual is not capable to form the requisite intent to commit the crime, they may not be one of the required "two or more persons" necessary for a conspiracy conviction under § 371. United States v. Phillips, 630 F.2d 1138 (6th Cir. 1980).
- e. Minors. Minors may constitute one of the necessary "two or more persons," however, each case must be considered based on the circumstances present in each particular case, considering the age of the minor, their intellect, their education, etc.
- f. Landlords and Tenants. A landlord does not automatically become a co-conspirator simply because he or she has knowledge that a tenant is utilizing the property for criminal activities. Instead, it must be shown that the landlord was a party to the agreement. This can be done by showing that the landlord had a stake in the outcome of the conspiracy, above and beyond collecting the normal rent for the property. If this cannot be shown, the landlord may still be guilty under Title 18 U.S.C. § 2 (Principals), discussed later in this lesson plan.
- g. Buyers and Sellers as Conspirators. A merchant need not abstain from engaging in his lawful business simply because

his customer is engaged in an illegal activity. United States v. Falcone, 311 U.S. 205 (1940). Knowledge of the part of the seller is not enough, standing alone, to make him or her a conspirator. The seller must also have the necessary intent to assist the criminal venture. For example, where a merchant charges more for the merchandise purchased for use in the criminal activity, the additional profits show that the seller has a stake in the outcome of the illegal venture. Direct Sales Co. v. United States, 319 U.S. 703 (1943).

Also, be aware of the following categories in determining the two or more persons requirement.

- h. Husbands and Wives. While considered a single "person" at common law, the Supreme Court has taken a different view, recognizing that a husband and wife may conspire with one another. United States v. Dege, 364 U.S. 51 (1960).
- i. Employers and Employees as Co-Conspirators. If an employee is aware that his or her work-related duties are contributing to a criminal venture on the part of his employer, the employee may be held liable as a conspirator.
- j. Attorneys. An attorney may become a co-conspirator by providing advice to conspirators, if the attorney provides the advice before or during the commission of the conspiracy; the attorney has knowledge of the conspiracy; and the attorney intends to assist the conspiracy in attaining its ultimate objective(s).
- k. Corporations. A corporation may be indicted for the crime of conspiracy in certain instances. Specifically, where there are two "real" people, one of whom is authorized to act on behalf of the corporation (e.g., a chief executive officer), and the conspiracy is formulated to benefit the corporation, both the individual conspirators and the corporation may be indicted.
- l. Consistency of Convictions
 - 1) Traditional Rule. Traditionally, the "Rule of Consistency" provided that, if co-conspirators were tried in a single trial, a sole co-conspirator could not be found guilty of conspiracy under § 371, if all other co-conspirators were acquitted.
 - 2) Recent Developments. Recently, however, a split has developed among the circuits regarding this issue. Eight of the federal Courts of Appeals no longer follow the traditional rule, while a ninth has questioned its continued validity. In those circuits that no longer

follow the traditional rule, the conviction of a co-conspirator may be upheld, even if all other co-conspirators were acquitted of the conspiracy charge in the same trial.

- 3) Multiple Trials. The “Rule of Consistency” is inapplicable in cases where co-conspirators are tried in separate trials, based on the fact that different juries may hear different evidence.

D. EPO #14: IDENTIFY WHEN KNOWLEDGE AND INTENT ARE SUFFICIENT TO CONSTITUTE A CONSPIRACY

1. General Concepts. In a conspiracy prosecution, the government must prove that the defendant had knowledge of the conspiracy and intended to participate in it.
2. Knowledge. To be a co-conspirator, an individual must know of the conspiracy’s existence and its overall plan or purpose.
 - a. Knowledge Regarding Co-Conspirators. While the defendant in a conspiracy case must know at least one other person involved in the conspiracy, there is no requirement that the defendant know the identity, number, or role of all co-conspirators involved in the plan. Blumenthal v. United States, 332 U.S. 539 (1947).
 - b. Knowledge Regarding Details of the Plan. Secrecy and concealment are essential features of a successful conspiracy. Accordingly, there is no requirement that the defendant know all of the details of the conspiracy. Blumenthal, *supra*.
 - c. Reasonably Foreseeable Acts. The reasonably foreseeable acts of one co-conspirator, committed in furtherance of the overall plan of the conspiracy, are attributable to all other co-conspirators. Pinkerton, *supra*.
3. Intent. The government must show that the defendant intended to participate in the conspiracy. In most cases, a defendant’s intent must be inferred from the circumstances and proven through circumstantial evidence. In making this determination, courts will look at “the defendant’s relationship with other members of the conspiracy, the length of association between the members, the defendant’s attitude and conduct, and the nature of the conspiracy.” United States v. Collazo, 732 F.2d 1200 (4th Cir. 1984), *cert. denied*, 469 U.S. 1105 (1985).

**E. EPO #15: RECOGNIZE AN AGREEMENT AND ITS FUNCTIONS
ACCORDING TO THE PROVISIONS OF TITLE 18 U.S.C. § 371**

1. General Concepts. The essence of any conspiracy is the agreement itself. Two or more persons must agree to work together towards the accomplishment of a common goal. The government must prove the existence of an agreement in order to successfully prosecute conspirators under § 371.
2. Proving the Agreement. An agreement may be proven through circumstantial evidence. The agreement does not have to be put into words, either oral or written. United States v. Armstrong, 16 F.3d 289 (8th Cir. 1994). In fact, an agreement may be inferred from all of the facts and circumstances. Hamling v. United States, 418 U.S. 87 (1974).
3. Number of Conspiracies. To determine whether more than one conspiracy exists, the crucial factor is the number of agreements. United States v. Kearney, 560 F.2d 1358 (9th Cir. 1967), cert. denied, 434 U.S. 971 (1977). One agreement results in only one conspiracy, even though the agreement encompasses several unlawful acts. In determining the number of conspiracies in existence, courts will examine the nature of the scheme; the identity of the participants; the quality, duration, and frequency of each conspirator's transactions; and the commonality of time and goals. United States v. Cambindo-Valencia, 609 F.2d 603 (2d Cir. 1979), cert. denied, 446 U.S. 940 (1980).
4. Objects of the Agreement. In order to prosecute a defendant under § 371, either the object of the agreement or the means to accomplish the object must (1) be a crime against the United States or (2) tend to defraud the United States. The objective of the conspiracy does not have to be a crime. Hammerschmidt v. United States, 265 U.S. 182 (1924). It is sufficient to show that the contemplated objective would "impede, impair, defeat, or obstruct the proper functions of the United States Government."
 - a. Legal Objective/Illegal or Fraudulent Means. The objective of the conspiracy may be entirely legal, but the means of accomplishing it violate Federal law. For example, if the objective of the conspirators is to open their own restaurant, but they rob banks in order to obtain the funds, a conspiracy charge will lie.
 - b. Illegal or Fraudulent Objective/Legal Means. In this situation, the objective of the conspiracy is illegal (such as committing arson of a Federal building), but the means of accomplishing it are perfectly legal (such as buying matches and gasoline). Because the objective is a violation of

Federal law, a conspiracy charge can be brought.

- c. **Illegal or Fraudulent Objective and Means.** In this situation, both the objective and the means of accomplishing it are illegal, such as when individuals steal weapons to use in a bank robbery. In such a case, a conspiracy charge would be proper.
5. **Factual Impossibility.** Even though it may be factually impossible to accomplish the objective of the conspiracy, this is not a defense to a prosecution under 371. United States v. Recio, 123 S.Ct. 819 (2003); United States v. Giry, 818 F.2d 120 (1st Cir.), cert. denied, 484 U.S. 855 (1987).

F. EPO #16: RECOGNIZE THE FUNCTION OF AN OVERT ACT IN THE CRIME OF CONSPIRACY

1. **General Concepts.** The final element that must be proven in any conspiracy prosecution under § 371 is that, following the agreement; one of the conspirators committed an overt act in furtherance of the agreement.
2. **Definition.** An “overt act” is any act by a conspirator that tends to assist in the accomplishment of the overall plan of the conspiracy.
3. **Purposes of the Overt Act.** The overt act serves three important purposes.
 - a. **Completes the Crime of Conspiracy.** Once an overt act is committed by one of the conspirators, the crime of conspiracy has been completed, irrespective of whether the ultimate goal of the conspiracy is ever committed.
 - b. **Withdrawal.** Since the crime of conspiracy is not actually complete until there has been an overt act, the overt act provides a demonstrable point in time before which an individual may withdraw from the agreement without incurring liability under § 371.
 - c. **Proof of Intent.** The overt act demonstrates that the conspirators have moved from thinking about the crime to actually acting on their agreement. In other words, an overt act shows that the agreement is not dormant, but that it is actively being pursued by the conspirators. Yates v. United States, 354 U.S. 298 (1957).
4. **Number of Overt Acts Required.** Only one overt act must be committed to complete the conspiracy. A single overt act committed by one conspirator is sufficient to complete the conspiracy for all members, including those who join the conspiracy after it has begun. United States v. Kissell & Harned, 218 U.S. 601 (1910).

5. Timing of the Overt Act. The overt act must occur after the agreement has been formed. An overt act performed prior to the agreement may not be used to complete the crime of conspiracy.
6. Nature of the Overt Act. The overt act need not be criminal in nature, but may, in fact, be entirely lawful. Braverman v. United States, 317 U.S. 49 (1942).

G. EPO #17: IDENTIFY WHEN A CO-CONSPIRATOR'S STATEMENT MAY BE USED DURING THE PROSECUTION OF A CONSPIRACY

1. General Concepts. Federal Rule of Evidence (Fed. R. Evid.) 801(d)(2)(E) provides, in pertinent part, that: "A statement is not hearsay if ... the statement is offered against a party and is ... a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy." Bourjaily v. United States, 483 U.S. 171 (1987).
2. Applying the Rule. Under Fed. R. Evid. 801(d)(2)(E), everything said, done, or written by a conspirator during the existence of the conspiracy and in execution or furtherance of the conspiracy is admissible against all co-conspirators. When determining whether a co-conspirator's statement is admissible under this rule, the following five (5) questions must be asked:
 - a. Was There a Conspiracy?
 - b. Was the Defendant a Member of the Conspiracy?
 - c. Was the Person Who Made the Statement a Member of the Conspiracy?
 - d. Was the Statement Made During the Conspiracy?
 - e. Was the Statement Made In Furtherance of the Conspiracy?
3. Analyzing the Responses. If the answer to each of the above questions is "yes," then the statement is admissible under Fed. R. Evid. 801(d)(2)(E). However, if the answer to any of the above questions is "no," then the statement is not admissible under this rule, although it may be admissible under another exception or exclusion to the hearsay rule. Bourjaily, *supra*.

H. EPO #18: IDENTIFY THE LIMITS OF THE WITHDRAWER'S OR LATE JOINER'S CRIMINAL LIABILITY

1. General Concepts. The law recognizes that someone may join or withdraw from a conspiracy after it has begun. Those who join the conspiracy after it has begun are referred to as "late joiners," while those who leave the conspiracy after it has begun are referred to as "withdrawers."

2. Late Joiners

- a. Criminal Liability. "Late joiners" are criminally liable not only for conspiracy, but for any reasonably foreseeable crimes committed by his co-conspirators while the "late joiner" is a member of the conspiracy, to include the ultimate goal of the conspiracy if it is a criminal offense. However, "late joiners" are not criminally responsible for any acts of co-conspirators committed prior to their joining the conspiracy. Levine v. United States, 383 U.S. 265 (1966). Nonetheless, the prior acts of the co-conspirator's are admissible at the trial of the "late joiner" in order to show that there was actually a conspiracy in existence for the "late joiner" to join. United States v. G.M.C., 121 F.3d 376 (7th Cir.), cert. denied, 314 U.S. 618 (1941).
- b. Effect on Conspiracy. The addition of a new conspirator does not create a new conspiracy.
- c. No Additional Overt Act Required. The addition of a new conspirator does not require that an additional overt act be performed after the "late joiner's" addition.

3. Withdrawers. A commonly utilized defense to a conspiracy charge is withdrawal.

- a. Criminal Liability. A conspirator who withdraws from a conspiracy is liable for the crime of conspiracy, as well as any reasonably foreseeable crimes committed by his co-conspirators while he was a member of the conspiracy. Only by withdrawing from the agreement prior to the overt act can an individual entirely avoid liability for a conspiracy charge. Once a valid withdrawal occurs, however, the withdrawing conspirator will escape liability for any subsequent criminal acts of the remaining conspirators. United States v. Richardson, 939 F.2d 135 (4th Cir. 1991), cert. denied, 502 U.S. 1061 (1992).
- b. Requirements. There are two (2) requirements that must be met for a conspirator to validly withdraw from a conspiracy.
 - 1) Affirmative Act. The first requirement the defendant must prove to establish a valid withdrawal from a conspiracy is that he or she took some affirmative act(s) inconsistent with the goals of the conspiracy. Unless the defendant produces affirmative evidence of withdrawal, his or her participation is presumed to continue. Hyde v. United States, 225 U.S. 347 (1912).
 - 2) Communication. The affirmative act of withdrawal

must be communicated in a manner reasonably calculated to reach at least one other co-conspirator or law enforcement. United States v. United States Gypsum Co., 438 U.S. 422 (1978).

- c. Mere Cessation of Activity. Withdrawal from a conspiracy requires more than simply cessation of participation in the conspiracy. United States v. Barsanti, 943 F.2d 428 (4th Cir. 1991), cert. denied, 503 U.S. 936 (1992).
- d. Burden. The burden of proving a valid withdrawal rests with the defendant.
- e. Effect on Conspiracy. The withdrawal of a single conspirator does not terminate the conspiracy or change the status of the remaining conspirators, unless the required “two or more persons” are no longer present (such as the withdrawal of a single conspirator from a two-person conspiracy).

I. ADDITIONAL TEACHING POINTS FOR THE CRIME OF CONSPIRACY

- 1. **Introduction.** The following additional teaching points may be made by the instructor, should time permit. These points deal with the statute of limitations, and venue for a conspiracy charge and attempt to commit a crime. At the present time, these additional teaching points are not testable material.
- 2. **Statute of Limitations.** Pursuant to Title 18 U.S.C. § 3282, the statute of limitations for the crime of conspiracy is five (5) years.
 - a. Running of the Statute. The statute of limitations begins to run from the date the conspiracy is terminated, which could result from a variety of situations, such as consummation of the objective or abandonment. Typically, however, the statute of limitations begins to run from the date the last overt act was committed in furtherance of the conspiracy. Fiswick v. United States, 329 U.S. 211 (1946).
 - b. Continuing Concealment of the Conspiracy. An agreement among the conspirators to conceal a conspiracy after its goals have been accomplished may, depending on the nature of the agreement, extend the running of the statute of limitations on the conspiracy charge. Grunewald v. United States, 353 U.S. 391 (1957).
 - c. Statute of Limitations on the Substantive Offense. The statute of limitations for any substantive offense committed by the conspirators begins to run from the date the offense was committed.
- 3. **Venue.** The Sixth Amendment requires that prosecution occur “in the State and District wherein the crime shall have been

committed.”

- a. Venue for the Conspiracy Charge. Because the legal basis for a conspiracy charge is an agreement and an overt act in furtherance of that agreement, venue for a conspiracy charge can actually lie in two (2) separate locations.
 - 1) Agreement. Venue for the conspiracy charge will lie in the district where the agreement was entered into.
 - 2) Overt Acts. Venue for the conspiracy charge will also lie in any district in which any overt act in furtherance of the agreement was entered into. Further, since the overt act of one conspirator is considered to be the overt act of all, an overt act by one conspirator will establish venue for all conspirators in a single district, even in a district where the others were never physically present.
 - b. Venue for Substantive Offenses. If a substantive offense is committed, venue for that offense will lie in the district where the crime actually occurred.
 - c. Title 18 U.S.C. § 3238. If the substantive offense is not committed within any state or district (e.g., the high seas), venue will lie in the district where the offender was arrested or into which he or she was first brought.
4. **Attempt.** Federal law provides no statutory definition of attempt to commit a crime. Precedent, however, establishes that to prove an attempt, the government must show a defendant’s intent to commit the proscribed criminal conduct together with the commission of an act that constitutes a substantial step towards the commission of the proscribed criminal activity. United States v. Pennyman, 889 F.2d 104 (6th Cir. 1989). Thus the crime of attempt requires proof of specific intent to complete the acts constituting the substantive offense, regardless of whether the choate offense is a general or specific intent crime.
- a. Impossibility. Factual impossibility, that is, the defendant is unable to accomplish what he intends because of some facts unknown to him, is not a defense to an attempt charge.
 - b. Abandonment/Withdrawal. The Model Penal Code recognizes abandonment as an affirmative defense to attempt under circumstances manifesting a complete and voluntary renunciation of criminal purpose. However, circuits addressing this issue have ruled that after a defendant has evidenced the necessary intent and has committed an act constituting a substantial step toward the commission of the offense, he has committed the crime of attempt, and can

withdraw only from the commission of the substantive offense. See, e.g. United States v. Shelton, 30 F.3d 702 (6th Cir. 1994).

V. OBSTRUCTION OF JUSTICE

A. RAPPORT AND OPENING STATEMENT

1. The obstruction of justice statutes are designed to protect the integrity of the entire federal court system, whether the proceedings are administrative and pending before a Federal agency; legislative and pending before Congress; or judicial and pending as civil, or criminal proceedings before any level of the Federal judiciary.
2. When viewed and used together, these statutes provide a federal criminal investigator with powerful weapons against any person who seeks to corrupt ongoing investigations and court proceedings, as well as possible future investigations.
3. This course will examine four specific provisions of the United States Code that pertain to obstruction of justice in regard to criminal investigations and proceedings.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #19: Identify conduct that can be prosecuted under Title 18 U.S.C. §§ 1503 and 1510.
- EPO #20: Identify the groups of persons who are protected under Title 18 U.S.C. §§ 1512 and 1513.
- EPO #21: Identify conduct that constitutes "tampering" in violation of Title 18 U.S.C. § 1512 and conduct that constitutes "retaliation" in violation of Title 18 U.S.C. § 1513.

C. EPO #19: IDENTIFY CONDUCT THAT CAN BE PROSECUTED UNDER TITLE 18 U.S.C. §§ 1503 AND 1510

1. Title 18 U.S.C. §1503. This statute was enacted to ensure that court proceedings would take place in an atmosphere that would be conducive to seeking and finding the truth, without fear of intimidation, coercion, or corruption.
2. The Statute. Entitled "Influencing or Injuring Officer or Juror Generally," the statute provides as follows:
 - a. *"(a) Whoever, corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing*

magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due administration of justice, shall be punished as provided in subsection (b).

3. Title 18 U.S.C. § 1503 serves to protect the individuals involved in the federal court system and the integrity of the system itself.
 - a. Section 1503 can be broken down into two distinct parts. The first part of § 1503 covers obstruction of justice by those who would tamper with, or retaliate against jurors or officers of the court. Officers of the court include judges, prosecutors, and defense counsel. Law enforcement officers are not covered under § 1503 as officers of the court.
 - b. The second part of § 1503 contains an omnibus clause, or catch-all provision that prohibits any conduct that would obstruct the due administration of justice. The omnibus clause allows prosecutions for obstruction of justice even if the defendant's actions were not specifically prohibited in § 1503, or if these actions were against individuals other than jurors and officers of the court, witnesses, for example. See United States v. Simmons, 591 F2d. 206 (3d Cir. 1979). The defendant was charged with two counts of obstructing justice under the omnibus clause of § 1503. In one count he was charged after he destroyed documents that had been subpoenaed by the grand jury. In the second count he was charged after he instructed his employees to withhold information from the grand jury after they were subpoenaed to testify. The court held that in both instances the defendant's conduct obstructed the due administration of

justice because it affected the ability of the grand jury to carry out its function. U.S. v. Rovetuso, 768 F.2d 809, 824 (7th Cir. 1985). (Section 1503 is violated when a defendant interferes with the due administration of justice by tampering with a witness).

4. The Elements of the Statute.

a. For § 1503 Tampering:

- 1) Whoever corruptly, or by threats, or force, or by any threatening letter, or communication,
- 2) Endeavors to influence, intimidate, or impede,
- 3) Any grand or petit juror, or officer in, or of , any court of the United States,
- 4) In the discharge of his duty.

b. For § 1503 Retaliation (juror):

- 1) Whoever injures,
- 2) Any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him or on account of his being or having been such juror.

c. For § 1503 Retaliation (judge and officers of the court):

- 1) Whoever injures,
- 2) Any such officer, magistrate judge or other committing magistrate in his person or property on the account of the performance of his official duties.

d. For § 1503 (omnibus):

- 1) Whoever, corruptly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes or endeavors to influence, obstruct, or impede,
- 2) the due administration of justice.

5. Pending Judicial Proceeding Required. In order to prevail on a charge which involves these elements, the government must prove the existence of a pending judicial proceeding. United States v. Fleming, 215 F. 3d 930 (9th Cir. 2000). See also United States v. Fulbright, 105 F3d 443, 450 (9th Cir. 1997), citing, Pettibone v. United States, 148 U.S. 197, 205-206 (1893), United States v. Mullins, 22 F.3d 1365, 1370 (6th Cir. 1994), United States v. Van Engel, 15 F.3d 623, 627 (7th Cir. 1993), United States v. Vesich,

724 F.2d 451, 454 (5th Cir. 1984). Pending judicial proceedings include grand jury investigations, pending criminal cases, and open appeals (civil, criminal or bankruptcy).

- a. United States v. Simmons, 591 F.3d 206 (3d Cir. 1979). Pending proceeding requirement is satisfied once grand jury subpoena to produce records is issued upon application of the Assistant United States Attorney even though the grand jury itself has no knowledge of the subpoena or the matters under investigation.
 - b. United States v. Johnson, 605 F.2d 729 (4th Cir. 1979) Defendant was convicted of theft of gasoline from an interstate pipeline and appealed. While his appeal was pending the defendant attempted to get the principal witness against him to falsely recant his testimony. After the indictment for obstructing the due administration of justice was quashed, the government appealed. The court held that the defendant's appeal on the original conviction was still a pending proceeding in the district court until final disposition of the appeal.
6. Intent. The government must also prove that the defendant acted "corruptly," which is to say with an evil or wicked intent. United States v. Barfield, 999 F.2d 1520 (11th Cir. 1993). The action taken by the defendant must be with the intent to influence judicial or grand jury proceedings. United States v. Aguilar, 515 U.S. 593, 599 (1995) (holding that uttering false statements to an investigating agent who might or might not testify before a grand jury is not sufficient for § 1503 liability). This is a "specific intent" crime, so if the intent cannot be shown, the crime cannot be charged. United States v. Bashaw, 982 F.2d 168 (6th Cir. 1992). To establish a violation of § 1503, the government must demonstrate that the defendant knew of the pending judicial proceeding and specifically intended to impede its administration. United States v. Guzzino, 810 F. 2d 687, 696 (7th Cir.).
7. Factual Impossibility. Whether the attempted obstruction of justice was successful is irrelevant for charging a violation of § 1503. The statute proscribes the endeavor to influence or obstruct the administration of justice; thus the impossibility of accomplishing the goal of the obstruction of justice does not prevent a prosecution for the endeavor to accomplish such a goal. United States v. Bucey, 876 F.2d 1297 (7th Cir. 1989). (Defendant, with knowledge of the ongoing grand jury investigation and of the subpoena issued to the witness, counseled the witness on how to role-play his grand jury

testimony with his attorney, and instructed the witness to provide false and misleading testimony to the grand jury. The witness however, was an undercover government agent who never intended to testify in front of the grand jury). Osborn v. United States, 385 U.S. 323, 333 (1966) (Defendant employed an individual to contact a prospective juror and offer him a bribe. The individual was an informant for the government. Although the informant never intended to carry out the scheme to bribe the juror, that did not preclude the defendant's conviction for endeavoring to bribe a juror.

8. Examples. The following cases show actions that constitute violations of § 1503.
 - a. Destroying documents sought by a grand jury. United States v. Ruggiero, 934 F.2d 440 (2d Cir. 1991).
 - b. Attempting to persuade a witness to falsely recant his trial testimony while the defendant's case is on appeal. United States v. Moody, 977 F.2d 1425 (11th Cir. 1992).
 - c. Soliciting a third-party to approach the judge in the defendant's case in an effort to influence the sentence to be imposed at the defendant's upcoming sentencing. United States v. Glickman, 604 F.2d 625 (9th Cir. 1979).
 - d. Standing up during the testimony of a witness, shaking his fist, and saying "You better not!" constituted obstruction of the due administration of justice. United States v. Harris, 558 F.2d 366 (7th Cir. 1977).
 - e. Falsifying a report likely to be given to a grand jury. United States v. Mullins, 22 F.3d 1365 (6th Cir. 1994).
 - f. Endeavoring to suborn perjury. United States v. Kenny, 973 F.2d 339 (4th Cir. 1992).
 - g. Giving false denials of knowledge and memory or false and evasive testimony. United States v. Langella, 776 F.2d 1078 (2d Cir. 1985).
9. Title 18 U.S.C. § 1505. This statute was enacted to ensure that administrative and civil proceedings were as free from corruption, fraud, and threats as criminal proceedings. Thus, it covers proceedings before any agency, whether administrative or civil in nature, as well as any actions that are designed to impede any investigations that are being conducted by any agency or by

Congress. (Although there is no EPO regarding § 1505 this is included for the instructors' information)

10. The Statute. Entitled "Obstruction of Proceedings Before Departments, Agencies, and Committees," the statute provides as follows:
 - a. *"Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or*
 - b. *Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress -Shall be fined under this title or imprisoned not more than five years, or if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both."*
11. The Elements of the Statute. In order to prove a violation of § 1505, the following three (3) elements must be shown. United States v. Price, 951 F.2d 1028 (9th Cir. 1991).
 - a. Pending Proceeding. First, there must be a "proceeding" pending before a department or agency of the United States.
 - b. Knowledge. Second, the defendant must be aware of the pending proceeding(s).
 - c. Intent. Third, the defendant must have intentionally endeavored to corruptly influence, obstruct or impede the pending proceeding(s).

12. Examples. The following cases show actions that constitute violations of § 1505.
- a. Destroying documents after an administrative subpoena had been served on a corporation in the course of a Department of Energy audit. United States v. Sutton, 732 F.2d 1483 (10th Cir. 1984).
 - b. Submitting false reports by written and oral representations in a Department of Labor investigation. United States v. Sullivan, 618 F.2d 1290 (8th Cir. 1980).
 - c. Making false statements to a Department of Defense auditor. United States v. Leo, 941 F.2d 181 (3d Cir. 1991).
13. Title 18 U.S.C. § 1510. Prior to the enactment of § 1510 it was not a crime to obstruct a criminal investigation or inquiry before the initiation of proceedings within the scope of § 1503 or § 1505. This statute was enacted to close the loophole on the protection of witnesses and informants created as a result of the "pending proceeding" requirement of § 1503 and § 1505, and provide for the prosecution of those who would interfere with the criminal investigative process. When initially enacted § 1510 prohibited any actions taken to obstruct federal criminal investigations by bribery, intimidation, misrepresentation, force or threats of force, and for retaliation against informants. In 1982 upon enactment of 18 U.S.C. § 1512, section 1510 was amended. As amended § 1510 prohibits any actions taken to obstruct federal criminal investigations by bribery. (See United States v. King, 762 F.2d 232 (2d Cir. 1985)). Section 1510 is aimed at those who try to buy the silence of an actual or potential witness through bribery. The statute also creates additional criminal liability when an officer of a financial institution "tips off" a customer or any other person about either the existence or the contents of a grand jury subpoena for financial information. However, that portion of the statute is beyond the purview of this course.
14. The Statute. Entitled "Obstruction of Criminal Investigations," the statute provides, in pertinent part, as follows:
- a. *"(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both."*

15. The Elements of the Statute. To prove a violation of § 1510, the government must establish the following elements.
 - a. Willfulness. First, the government must show that the defendant intentionally tried to obstruct, delay, or prevent another person from communicating information to a criminal investigator.
 - b. Bribery. Second, the government must show that the attempt to silence the witness was by means of bribery (offering something of value to the witness).
 - c. Criminal Statute. Finally, the information that the defendant is trying to stop from reaching criminal investigators must relate to a violation of a criminal statute of the United States.
16. Knowledge Required. The government must show that the defendant had actual knowledge that the intended recipient of the information was a federal criminal investigator. United States v. Lippman, 492 F2d 314 (6th Cir. 1974). However, the defendant need not actually know that the information has been or is about to be supplied to a federal criminal investigator. It is required only that the defendant reasonably believed that information had been, or would be, supplied to a federal criminal investigator.
17. Victim's Intent. The government is not required to show that the victim actually intended to give information to a federal criminal investigator or that the defendant knew the contents of the information. Further, it is not necessary to prove that the victim felt threatened (i.e., the victim could be a willing participant in the obstruction).
18. Investigation Not Required to be Ongoing. To successfully prosecute a defendant for violating § 1510, there is no requirement that an investigation be underway or ongoing. Actions taken prior to the commencement of a formal investigation come within the statute if the prosecution proves that the defendant knew or reasonably believed that the person sought to be influenced had relevant information and was likely to share it with law enforcement officers.

D. EPO #20: IDENTIFY THE GROUPS OF PERSONS WHO ARE PROTECTED UNDER TITLE 18 U.S.C., §§ 1512 AND 1513

1. Title 18 U.S.C. §1512. Congress passed the Victim Witness Protection Act in 1982 which created § 1512 and § 1513. Section

1512 was enacted to protect various classes of individuals before they testify or communicate information to a law enforcement officer. It prohibits conduct that is intended to drastically impact and subvert the lawful presentation of evidence in federal proceedings or the communication of information to a federal law enforcement officer or federal judge. It is important to note that this statute covers both "violent" tampering, as well as more subtle forms of tampering, such as deliberately using false and misleading statements to cause a witness to either fail to appear or to destroy or alter evidence.

2. § 1512. Tampering with a witness, victim, or an informant

(a) (1) Whoever kills or attempts to kill another person, with intent to--

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to--

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to--

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is--

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

(B) in the case of--

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

(b) Whoever knowingly uses intimidation, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--

(1) influence, delay or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to--

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from--

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United

States the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section--

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance--

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate [United States magistrate judge], a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

3. Section 1512 encompasses four distinct offenses.
 - a. Killing or attempting to kill a victim, witness, or informant;
 - b. Intimidating, threatening, or misleading a witness, victim, or informant; and
 - c. Harassing a witness, victim, or informant.
 - d. Destroying or concealing documents to impair their integrity or availability in a proceeding.
4. The Elements of the Statute. The following elements must be proven to convict a defendant of violating §1512.
 - a. Killing or Attempting to Kill a Victim, Witness or Informant
 - 1) That the defendant killed, attempted to kill, or used physical force against a witness, victim or informant, **with the intent to:**
 - 2) Prevent their attendance or testimony in an official proceeding, **or**
 - 3) Prevent the production of documents, or other objects in an official proceeding, **or**
 - 4) Prevent the communication of a federal criminal violation to a federal law enforcement officer or judge.
 - b. Intimidating, Threatening or Misleading a Witness, Victim or Informant
 - 1) That the defendant **knowingly** used intimidation, threats, or engaged in misleading conduct toward another person **with the intent to:**
 - 2) Prevent their attendance or testimony in an official proceeding, **or**
 - 3) Prevent the production of documents or other objects in an official proceeding, **or**
 - 4) Prevent the communication of a federal criminal violation to a federal law enforcement officer or judge.
 - c. Harassing a Witness, Victim or Informant

- 1) That the defendant **intentionally** harassed a witness, victim or informant which resulted in:
 - 2) Hindering, delaying, preventing, or dissuading the person from:
 - 3) Attending or testifying in an official proceeding, **or**
 - 4) Reporting to a law enforcement officer or judge of the United States a violation of federal law.
 - d. Destruction, Mutilation or Concealment of Documents or Objects
 - 1) That the defendant **corruptly** altered, destroyed, mutilated, or concealed a record, document or other object **with the intent to:**
 - 2) Impair the object's integrity or availability for use in an official proceeding
5. Who is Protected? The following persons are protected by the provisions of §1512.
- a. Victims;
 - b. Witnesses; and
 - c. Informants
6. Timing of the Offense. This statute covers actions by a defendant that take place before an individual testifies or provides information to the government.
7. Extraterritorial Jurisdiction. There is extraterritorial federal jurisdiction over an offense under §1512. Thus, the acts which constitute a basis for the charge do not have to occur within the jurisdiction of the United States.
8. Title 18 U.S.C. §1513. This statute protects witnesses, victims, and informants after they have testified or reported information to a criminal investigator or law enforcement officer. Under §1513, two types of conduct are addressed. First, the statute addresses threats of retaliation; second, the statute addresses attempts at retaliation.
9. The Statute. Entitled "Retaliating Against a Witness, Victim, or an Informant," the statute provides as follows.
- § 1513. Retaliating against a witness, victim, or an informant
- (a) (1) Whoever kills or attempts to kill another person with intent to retaliate against any person for--
- (A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by

a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is--

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 20 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for--

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

[(f)](e) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

10. Section 1513 encompasses three distinct offenses when retaliatory action is taken against a victim, witness or informant on account of their involvement in a federal investigation or proceeding.
 - a. Killing or attempting to kill a witness, victim or informant
 - b. Causing bodily injury to a witness, victim or informant, or damage to their property,
 - c. Taking any harmful action against a witness, victim or informant.
11. The Elements of the Statute. The following elements must be proven to convict a defendant of violating §1513.
 - a. Killing or Attempting to Kill a witness, victim or informant.
 - 1) That the defendant killed or attempted to kill a witness, victim or informant with the ***intent to retaliate*** against them for:
 - 2) Their attendance or testimony in an official federal proceeding, ***or***
 - 3) The production of a document or other object in a federal proceeding, ***or***
 - 4) The communication of a federal violation to a federal law enforcement officer.
 - b. Causing bodily injury to a witness, victim or informant or damage to their property.
 - 1) That the defendant ***knowingly*** engaged in any conduct which
 - 2) Caused bodily injury to another person or their property, or threatened to do so with ***the intent to retaliate*** against them for:
 - 3) Their attendance or testimony in an official federal proceeding, ***or***
 - 4) The production of a document or other object in a federal proceeding, ***or***
 - 5) The communication of a federal violation to a federal law enforcement officer.
 - c. Taking any harmful action against a witness, victim or informant.
 - 1) That the defendant knowingly, with the intent to retaliate

- 2) Took any harmful action, including interference with the lawful employment or livelihood of any person,
 - 3) For providing to a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense.
12. In order to prove a violation of any provision of § 1513, the government must prove the following elements.
- a. An Act. First, the government must prove that the defendant retaliated against, attempted to retaliate against, or threatened to retaliate against, an individual who had testified or reported information to a criminal investigator.
 - b. Intent. Second, the government must prove that the defendant acted with the specific intent to retaliate against the individual for his or her testimony or reporting.
 - c. Knowledge. Third, the government must prove that the defendant intentionally took action against the individual with the knowledge that the victim or another person had been a party to or a witness in a federal proceeding or had reported information to a federal law enforcement officer.
13. Extraterritorial Jurisdiction. Again, there is extraterritorial federal jurisdiction over an offense under section 1513.

E. EPO #21: IDENTIFY CONDUCT THAT CONSTITUTES “TAMPERING” IN VIOLATION OF TITLE 18 U.S.C. § 1512 AND CONDUCT THAT CONSTITUTES “RETALIATION” IN VIOLATION OF TITLE 18 U.S.C. § 1513

1. The following acts constitute “tampering” in violation of 18 U.S.C. § 1512.
 - a. Killing or attempting to kill a person to prevent testimony or production of documents or information. United States v. Galvan, 949 F.2d 777 (5th Cir. 1991).
 - b. Using intimidation tactics, although the witness does not have to be intimidated in fact. United States v. Johnson, 903 F.2d 1084 (7th Cir. 1990).
 - c. Using physical force against a witness or informant. United States v. Scaife, 749 F.2d

338 (6th Cir. 1984).

- d. Threatening the use of physical force. United States v. Dunning, 929 F.2d 579 (10th Cir. 1991).
 - e. Corruptly persuading a person not to testify. United States v. Aguilar, 21 F.3d 1475 (9th Cir. 1994).
2. The following demonstrates “retaliation” in violation of 18 U.S.C. § 1513.
- a. Actions that do not rise to the level of attempt may be successfully prosecuted as “endeavors” under this statute, if the goal was to cause injury. United States v. Garcia-Pupo, 845 F.2d 8 (1st Cir. 1988).
 - b. Threats to retaliate are enough to prosecute under this statute when it can be proven that the defendant acted with the specific intent to obstruct a federal investigation or proceeding. United States v. Brown, 937 F.2d 32 (2d Cir. 1991).
 - c. The fact that a threat is never carried out does not act as a defense to a charge of violating § 1513. United States v. Maggitt, 784 F.2d 590 (5th Cir. 1986).

F. § 1503 OMNIBUS CLAUSE AND § 1512

- 1. With the passage of the Victim and Witness Protection Act in 1982 it was possible for a person to be charged with witness tampering under § 1512 or under § 1503 (Omnibus Clause). An issue for the courts to decide was whether § 1512 was the exclusive statute for charging witness tampering, or could a person be charged with witness tampering under the Omnibus Clause of §1503.
- 2. A majority of circuits have rejected the idea that § 1512 is the exclusive statute for charging witness tampering, and that § 1503 (Omnibus Clause) may be used if desired by the government. Keep in mind that the pending proceeding requirement must be met in prosecution under § 1503 (Omnibus Clause).
- 3. Cases that have held that § 1512 is not the exclusive statute for charging witness tampering:
 - a. United States v. Kenny, 973 F.2d 339 (4th Cir. 1992)
 - b. United States v. Branch, 850 F.2d 1080 (5th

- Cir. 1988)
 - c. United States v. Wesley, 748 F. 2d 962 (5th Cir. 1984)
 - d. United States v. Tackett, 113 F.3d 603 (6th Cir. 1997)
 - e. United States v. Maloney, 71 F.3d 645 (7th Cir. 1995)
 - f. United States v. Rovetuso, 768 F.2d 809 (7th Cir. 1985)
 - g. United States v. Risken, 788 F.2d 1361 (8th Cir. 1986)
 - h. United States v. Ladum, 141 F.3d 1328 (9th Cir. 1998)
 - i. United States v. Moody, 977 F.2d 1420 (11th Cir. 1992)
4. Cases that have held that § 1512 is the exclusive statute for charging witness tampering:
- a. United States v. Masterpol, 940 F.2d 760 (2d Cir. 1991)
 - b. United States v. Hernandez, 730 F.3d 895 (2d Cir. 1984)

VI. FEDERAL FRAUD STATUTES

A. RAPPORT AND OPENING STATEMENT

1. Title 18 U.S.C. §1341, Mail Fraud, Title 18 U.S.C. §1343, Wire Fraud, and Title 18 U.S.C. § 2314, Interstate Transport of Stolen Property (or the National Stolen Property Act) are three of the most important statutes utilized by Federal criminal investigators to combat the full gamut of frauds, schemes and swindles that know no state boundaries. In fact, crimes which would otherwise be purely state or local offenses can gain Federal stature by the simple act of using the United States mails, an interstate commercial carrier, the interstate communications system, or any other facility of interstate commerce.
2. Title 18 U.S.C. §1341 is based on Article I, section 8 of the United States Constitution, which vests authority in the Federal government over "post offices and post roads". By 1872, when the statute was enacted, the United States mails had become the easiest and least expensive means for communicating throughout the country and its territories. Unfortunately, the unscrupulous were quick to capitalize on this new convenience as a mechanism for committing frauds. The advantages of using the mails to commit schemes, frauds and swindles were many: fewer face-to-face transactions, making identification and prosecution more difficult; the availability of rented post office boxes, which allowed those so inclined to operate under a false name in a town where they did not reside; the limited resources of state and local law enforcement authorities, which made investigations of crimes originating in other states difficult to investigate; and the absence of laws that made conduct spanning more than one state illegal. Congress closed that door with the enactment of this statute in 1872.
3. More recently, with the advent of the telegraph, telephone, radio, television and the Internet, as well as improved means to travel in interstate and foreign commerce, creative criminals have devised means of defrauding victims by relying on these various interstate communications facilities and travel means. Schemes have ranged from the religious, such as that perpetrated by Jim and Tammy Faye Bakker, to the "boiler room" scams which target older people and obtain money via telephone using various bullying techniques. New schemes are arising on a daily basis on the Internet. In addition, con artists lure their victims over state lines and from overseas to mislead them face-to-face. As a result, these three statutes remain a vital part of the Federal investigator's arsenal

against crime.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #22: Identify the elements of the Mail Fraud statute, Title 18 U.S.C. § 1341, and the Wire Fraud statute, Title 18 U.S.C. § 1343.
- EPO #23: Identify the elements of the National Stolen Property Act, Title 18 U.S.C. § 2314.

C. EPO #22: IDENTIFY THE ELEMENTS OF THE MAIL FRAUD STATUTE, TITLE 18 U.S.C. § 1341, AND THE WIRE FRAUD STATUTE, TITLE 18 U.S.C. § 1343.

1. Title 18 U.S.C. §1341. Titled “Frauds and Swindles”, but commonly referred to as the “Mail Fraud Statute”, this statute provides as follows:
 - a. *“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”*
2. Elements of Title 18 U.S.C. §1341. Title 18 U.S.C. §1341 is designed to criminalize the use of the mails to facilitate a fraud, scheme or other illegal plan. In order for a person to be convicted under this statute, the government must prove beyond a reasonable doubt each of the following five elements:
 - a. Any person who

- b. Intentionally
- c. Devises a fraudulent scheme, and
- d. Uses or causes the mails to be used (Postal Service or private/commercial interstate carrier)
- e. In furtherance or in support of the scheme.

American Automotive Accessories, Inc. v. Fishman, 175 F.3d 534, 542 (7th Cir. 1999); Viriden v. Graphics One, 623 F.Supp. 1417, 1422-1423 (C.D. Cal. 1985). If these elements are proven and the defendant is found guilty, he/she can be fined up to \$250,000 per count or imprisoned up to 20 years, or both. If the victim or target of the scheme is a financial institution, the fine can be up to \$1,000,000 or imprisonment of up to 30 years, or both.

3. Proof of the Elements of Mail Fraud

- a. What is "intentionally"? An action is proved to have been taken with specific intent if it is proven that "the scheme was reasonably calculated to deceive persons of ordinary prudence and comprehension". Viriden, supra, at 1422. How can intent be proven? Intent is proven by showing the scheme itself. The scheme may utilize an affirmative misrepresentation of fact, or may instead involve the deceitful concealment of material facts. Viriden, supra.
- b. What is a "fraudulent scheme"? A fraudulent scheme is the intentional presentation of falsehoods as if true, with the goal of causing someone to part with something of value under false pretenses. The words "to defraud" commonly refer to "wronging one in his property rights by dishonest methods or schemes, and usually signify deprivation of something of value by trick, deceit, chicanery or overreaching." McNally v. United States, 483 U.S. 350 (1987). Does the misrepresentation have to be material to the fraud? Under the holding of Neder v. United States, 527 U.S. 1 (1999), the answer is yes. The Supreme Court pointed out that the well-settled meaning of "fraud" required a misrepresentation or concealment of material fact, and therefore, the materiality of the falsehood is an element of the federal mail fraud statute. Neder, supra at 1840-1841. In 1988, Congress expanded the definition of "scheme or artifice to defraud" when it enacted Title 18 U.S.C. §1346, which states: "*For the purpose of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services.*" Thus, no longer does the scheme have to involve the taking of money or

tangible personal property, as previously defined in McNally, supra: This statute can now be used to reach schemes which deprive the public of the honest services of public officials. However, the Circuits are split on their willingness to apply the Mail Fraud statute to cases involving dishonest services.

- c. What act “causes the mails to be used”? It is not necessary to show that the defendant personally used the mail services, but only that the defendant caused the mail services to be used by “acting with the knowledge that their use would follow in the ordinary course of business, or where such use could reasonably be foreseen.” American Automotive Accessories, Inc. v. Fishman, 175 F.3d 534, 542 (7th Cir. 1999), citing United States v. Alexander, 135 F.3d 470, 474-475 (7th Cir. 1998); see also, United States v. Wicker, 80 F.3d 263 (8th Cir. 1996); United States v. Fox, 69 F.3d 15 (5th Cir. 1995). Thus, evidence will be sufficient to meet this element of the offense when it can be proven either that:

- 1) the defendant personally used the mails for the purpose of executing a scheme to defraud; or
- 2) the defendant acted knowing that the use of the mails would follow in the ordinary course of business; or
- 3) even when the use of the mails was not intended, such use was reasonably foreseeable.

Virden v. Graphics One, 623 F.Supp. 1417, 1422 (C.D. Cal. 1985), citing United States v. Garner, 663 F.2d 834, 838 (9th Cir. 1981), cert. denied, 456 U.S. 905 (1982); see also American Automotive Accessories, Inc., supra, at 542.

Each mailing which is in furtherance of the scheme is a separate offense, and will support a separate charge. United States v. McClelland, 868 F.2d 704 (5th Cir. 1989). The mailing can be either interstate or intrastate (Article I, section 8, United States Constitution).

- d. What is “in furtherance or in support of the scheme”? The mailings do not have to be an essential part of the planned scheme, but they must be made for the purpose of executing the scheme. Virden v. Graphics One, 623 F.Supp. 1417, 1423 (C.D. Cal. 1985). The mailings do not have to occur at the time of the original fraud. If the defendant is engaged in an ongoing scheme, and the mailings are both reasonably foreseeable and allow the scheme to continue undetected, the defendant can be charged with mail fraud for each

mailing that occurs, even if the mailings occur years after the original fraud. United States v. Lane, 474 U.S. 438, 451-2 (1986) (mailings are within the five-year statute of limitations if their purpose is “to lull the victims into a false sense of security, postpone their ultimate complaint to the authorities, and therefore make the apprehension of the defendants less likely than if no mailings had taken place”); Schmuck v. United States, 489 U.S. 705 (1989) (in odometer rollback scheme, later mailings of titles by state transportation department were reasonably foreseeable and facilitated the continuance of the scheme).

4. Title 18 U.S.C. § 1343. Officially titled “Fraud by Wire, Radio, or Television”, this statute is commonly referred to as the “Wire Fraud Statute”. It provides:
 - a. *“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”*
 - b. Elements of Title 18 U.S.C. § 1343. Cases consistently state that the elements of Title 18 U.S.C. §§ 1341 and 1343 are the same. American Automotive Accessories, Inc. v. Fishman, 175 F.3d 534, 542 (7th Cir. 1999); United States v. Ames Sintering Co., 927 F.2d 232, 234 (6th Cir. 1990); United States v. Puckett, 692 F.2d 663, 669 (10th Cir.), cert. denied, 459 U.S. 1091 (1982). One substantial difference, however, is that, to be indictable under Section 1343, the wire transmission must have been **interstate**. Puckett, supra. Intrastate telephone calls and transmissions do not violate the statute.
 - c. The communication required under the statute does not have to be directed to the victim of the fraudulent scheme, and the defendant does not have to be the person who made the wire communication if he participated in devising the scheme to defraud and the use of interstate wires was foreseeable. United States v. Puckett, 692 F.2d 663, 669 (10th Cir.), cert. denied, 459 U.S. 1091 (1982). The scheme does not have to actually succeed, the victim does not have

to actually suffer a loss, nor does the defendant have to secure a gain to be prosecuted under this statute, and the communication itself does not have to actually further the scheme. United States v. Ames Sintering Co., 927 F.2d 232, 235 (6th Cir. 1990). Interstate and international telephone calls seeking a person to execute a horse to complete an insurance scheme supported wire fraud convictions. United States v. Lindemann, 85 F.3d 1232 (7th Cir.), cert. denied, 519 U.S. 966 (1996). Similarly, interstate telephone calls made by patients to schedule appointments with a medical doctor who fraudulently treated them for infertility were properly indicted as wire fraud charges. United States v. Jacobson, 1993 U.S. App. LEXIS 22534 (4th Cir. 1993), cert. denied, 511 U.S. 1069 (1994). Finally, as with the Mail Fraud statute, wire transmissions designed to lull a victim into complacency, thereby keeping him from discovering the fraud and contacting the authorities, can be charged even though they occur after the defendant has obtained something of value from the victim. In effect, these “lulling” wires extend the five-year statute of limitations in a wire fraud case. See, e.g., United States v. Rogers, 9 F.3d 1025 (2d Cir. 1993).

D. EPO #23: IDENTIFY THE ELEMENTS OF THE NATIONAL STOLEN PROPERTY ACT, TITLE 18 U.S.C. § 2314

1. Title 18 U.S.C. § 2314. The National Stolen Property Act, commonly referred to as the “Interstate Transport of Stolen Property” or “ITSP”, was enacted to federalize thefts and frauds that crossed state lines. In 1990, the statute was amended to encompass the transportation of stolen goods through foreign commerce. The statute provides as follows:
 - a. *“Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5000 or more, knowing the same to have been stolen, converted or taken by fraud; or*
 - b. *“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of \$5000 or more; or*

- c. *“Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or*
 - d. *“Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler’s checks bearing a forged countersignature; or*
 - e. *“Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof –*
 - f. *“Shall be fined under this title or imprisoned not more than ten years, or both.*
 - g. *“This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.”*
2. Title 18 U.S.C. § 2314 – Generally. Congress enacted the National Stolen Property Act (hereinafter, “ITSP”) pursuant to its authority under the Commerce Clause. In general, its provisions prohibit: transporting goods known to be stolen, converted or fraudulently obtained across state lines or our national boundaries; inducing or causing people to travel, or transporting them, across state lines or our national boundaries in furtherance of a fraudulent scheme; and transporting forged securities and traveler’s checks across state lines or our national boundaries. The statute converts what were once solely state and local crimes into federal violations, thereby supplementing and enhancing local law enforcement efforts by extending federal law enforcement jurisdiction.
 3. Elements of Title 18 U.S.C. § 2314. The statute is comprised of five distinct provisions which together proscribe activities involving the transportation of certain specified items and persons across state lines and in interstate commerce. Each such provision requires its own elements of proof and will be considered in order of appearance:

4. Paragraph One - The Elements:
 - a. Transportation in interstate or foreign commerce . . .
 - b. Of any goods, wares, merchandise, securities or money valued at \$5000 or more. . .
 - c. Knowing the same to have been stolen, converted or taken by fraud.
5. Paragraph One – Proving the Elements:
 - a. Interstate or Foreign Commerce. Generally, a prosecution for violation of ITSP will not lie unless the property or moneys obtained by theft or fraud have been transported or transferred across state lines or in foreign commerce. Transportation or transfer of such items within a single state does not satisfy the requirements of the statute. It is the transport or transfer of the stolen or fraudulently obtained property or moneys from one state to another or between the United States and a foreign country that violates the statute and confers federal jurisdiction over the crime. Thus, a thief who steals property in Georgia and then transports it to Florida commits a violation of ITSP. If instead he remains in Georgia with the proceeds of his theft, the suspect has violated state law, but not federal law.
 - b. Transport, transfer or transmit. The means by which the stolen or fraudulently obtained property or money is transported, transferred or transmitted across state lines is not material. It is sufficient that the defendant transported the item personally or *caused* the item to be transported, transferred or transmitted in interstate or foreign commerce. Pereira v. United States, 347 U.S. 1 (1954). Thus, reliance on a private or commercial courier, or use of the U.S. Mail, thereby causing the interstate transport of the stolen merchandise, satisfies this element of the statute. Furthermore, when an act is performed with knowledge the mail will be used in the ordinary course of business, or where such use can be reasonably foreseen, even though not actually intended, the person “causes” the mail to be used. Likewise, interstate wire transfers of funds obtained through theft or fraud constitute violations of ITSP. The courts have consistently held that ITSP can be charged concurrently with the Mail Fraud and Wire Fraud statutes because they demand proof of at least one different element. Accord Pereira at 9. With regard to foreign commerce, ITSP makes it a crime to transport to the United States goods stolen in a foreign country, even if they do not subsequently travel in interstate commerce once in country. United States

v. Davis, 608 F.2d 555 (5th Cir. 1979). Further, property or moneys obtained by fraud or theft in the United States and then transported or transmitted overseas violate ITSP. The Second Circuit has held that stolen property transported to a restricted customs area by an exporter and placed in the possession of the shipping company was “in foreign commerce” though no borders had been crossed. United States v. Ajlouny, 629 F.2d 830 (2d Cir. 1980), cert. denied, 449 U.S. 1111 (1981).

- c. Value of \$5000 or more. To sustain a conviction under ITSP, the government must prove the stolen or fraudulently obtained property transported in interstate or foreign commerce is valued at \$5000 or more. According to the legislative history of the statute, the purpose of this limitation is to avoid over-extending the resources of the federal government by leaving prosecutions of less substantial thefts and frauds to the states. In addressing the valuation element of ITSP, the courts refer initially to 18 U.S.C. § 2311, which defines “value” as “face, par, or market value, whichever is the greatest” For items with no face or par value, the courts have generally defined market value as “the price a willing buyer would pay a willing seller either at the time and the place that the property was stolen or at any time during the receipt or concealment of the property.” United States v. Robinson, 687 F.2d 359, 360 (11th Cir. 1982); accord, United States v. Ruhe, 191 F.3d 376 (4th Cir. 1999). In applying this standard, the courts look to the particular facts of each case and pose the question: in what type of transaction would the person from whom the property was stolen have engaged? If the victim was a wholesale merchant, the value for purposes of ITSP is the wholesale market price; if the victim was a retail merchant, the value of the stolen property is the retail market price. Robinson at 360; United States v. Willette, 764 F.Supp. 759 (N.D.N.Y. 1991). Where there is no established market for the stolen item, courts have relied on the prices paid among those dealing in the stolen property, referring to this as the “thieves market”. See, United States v. Berkitt, 619 F.2d 649, 658 (7th Cir. 1980). Finally, each interstate or foreign transport or transfer of an item valued at \$5000 or more can be charged as a separate count of ITSP.
- d. Aggregation. The definition of “value” set forth in 18 U.S.C. 2311 concludes with the statement: “. . . and the aggregate value of all goods, wares, and merchandise, securities and money referred to in a single indictment shall constitute the value thereof.” In Schaffer v. United States, 362 U.S. 511

(1960), the Supreme Court considered whether individual shipments of stolen goods in interstate commerce valued at less than \$5000 could be aggregated to attain the jurisdictional minimum specified by ITSP. Relying on a “sensible reading of the statute” the Court affirmed the notion that “where the shipments have enough relationship so that they may properly be charged as a single offense, their value may be aggregated.” Schaffer at 517. In Schaffer, the aggregated value was based on series of shipments to a particular defendant. Where the shipments were spread among more than one person, the Fourth Circuit aggregated the value of the individual shipments once the government proved they were part of a “common design” (i.e., single plan or agreement). Andrews v. United States, 108 F.2d 511 (4th Cir. 1939).

- e. Knowledge. To obtain a conviction under ITSP, the government must show that the defendant knew that the items he transported or caused to be transported in interstate or foreign commerce were stolen, embezzled, or obtained by fraud. The government is not required to prove that the defendant knew, foresaw, or intended that the stolen items were or would be transported in interstate or foreign commerce. The courts have generally held that the jury may infer that a person in possession of recently stolen property knew the property was stolen, unless such possession is satisfactorily explained. Barnes v. United States, 412 U.S. 837, 845 (1973); see also, United States v. Cowden, 545 F.2d 257 (1st Cir. 1976), cert. denied, 430 U.S. 909 (1977); United States v. McGregor, 529 F.2d 928 (9th Cir. 1976).

- 6. Paragraph Two – The Elements: The second paragraph of ITSP makes it a federal crime to cause potential victims (or the agent of the victim) of a fraudulent scheme to travel in interstate or foreign commerce to execute or conceal the scheme. This provision of the statute is referred to as prohibiting “travel fraud”. In its most basic application, a con artist who misleads his victim in a face-to-face encounter can still be charged with ITSP if the victim or the victim’s agent crossed state lines or traveled into or out of the United States to investigate or learn of the fraudulent offer and ultimately handed his money or property to the defendant. See, e.g., United States v. Steffen, 251 F.3d 1273 (9th Cir. 2001). The elements of this second paragraph are:

- a. Transportation of or inducement of a person to travel in interstate or foreign commerce . . .
- b. For the purpose of defrauding that person of money or property valued at \$5000 or more.

7. Paragraph Two – Proving the Elements:

- a. Transport or induce to travel in interstate or foreign commerce. This element of ITSP is met if a potential or actual victim of a fraud scheme travels in interstate or foreign commerce in connection with the scheme. It is not necessary to prove the victim actually parted with their money or property; instead it is sufficient if the defendant induced them to travel in an effort to defraud them. Likewise, the government need not prove that the money or property lost by the victim to the defendant traveled in interstate or foreign commerce. United States v. Benson, 548 F.2d 42, 46 (2d Cir. 1977). Thus, where a con artist induces his next door neighbor to travel out of state to view certain real estate parcels offered in a fraudulent scheme, he can be charged with ITSP whether or not the neighbor invests; further, he can be charged with ITSP based on the interstate travel of the neighbor even if the neighbor does not invest until he returns home and hands his funds to the con artist. (Of course, the U.S. Attorney's decision whether or not to prosecute the case will generally rest on the amount of the *actual* loss suffered by the victims of the scheme).
- b. To Defraud of \$5000 or More. As with the Mail Fraud and Wire Fraud statutes, the government must prove the defendant's intent to defraud. See the prior discussion concerning that element under the Mail Fraud statute above. As to meeting the jurisdictional amount of \$5000 or more, see the discussion concerning the valuation element for Paragraph One above.
- c. Travel Fraud Cases. The following are examples of cases in which defendants have been charged with "travel fraud" under ITSP:
 - 1) United States v. Jacobson, 1993 U.S. App. LEXIS 22534 (4th Cir. 1993), cert. denied, 511 U.S. 1069 (1994) - § 2314 violated by doctor who induced out-of-state patients to travel to his Virginia clinic for fraudulent fertility treatments.
 - 2) United States v. Casperson, 773 F.2d 216 (8th Cir. 1985) – Travel fraud provision of ITSP violated through inducement of investors to travel across state lines in advance fee loan scheme.
 - 3) United States v. Biggs, 761 F.2d 184 (4th Cir. 1985) – Defendant committed travel fraud under ITSP by inducing Florida residents to visit coal mine in West Virginia for purposes of obtaining fraudulent

investments.

8. Paragraph Three – The Elements: The third paragraph of ITSP prohibits the transportation of falsely made, forged, altered or counterfeited securities or tax stamps in interstate and foreign commerce. The government must prove the following elements:
 - a. Transport in interstate or foreign commerce . . .
 - b. Falsely made, forged, altered or counterfeited securities or tax stamps . . .
 - c. With unlawful or fraudulent intent . . .
 - d. Knowing the securities or tax stamps to be forged, altered or counterfeited.
9. Paragraph Three – Proving the Elements:
 - a. Interstate or Foreign Commerce. See discussion above concerning this element under Paragraph One. In addition, as discussed below, this section of ITSP covers the negotiation of forged out-of-state checks. Thus, a defendant who makes payment with a falsely made or forged check drawn on an out-of-state bank can be charged with ITSP based on the subsequent interstate transfer of the check in the bank collection process. Pereira v. United States, 347 U.S. 1 (1954). Further, each act of transporting the subject securities in interstate or foreign commerce constitutes a single offense under ITSP. Thus, a defendant who transports several forged checks or securities at one time may be charged with only one count of ITSP. It is not the number of false securities, but rather the number of state lines crossed that determines the number of counts to be charged. United States v. Frierson, 2000 U.S. App. LEXIS 27939 (10th Cir.). Alternatively, the government may charge as separate counts of ITSP each negotiated check that enters interstate commerce to be processed through the banking system. See, e.g., United States v. Flick, 516 F.2d 489 (7th Cir.), cert. denied, 423 U.S. 931 (1975); United States v. White, 524 F.2d 1249 (5th Cir. 1975), cert. denied, 426 U.S. 922 (1976).
 - b. Falsely made, forged, altered or counterfeited securities. The following have been deemed “securities” for purposes of the third paragraph of ITSP:
 - 1) Checks – see citations above; also, see below, this paragraph of ITSP does not apply to **checks with forged endorsements**;
 - 2) Quit Claim Deeds – United States v. Speidel, 562

- F.2d 1129 (8th Cir. 1977), cert. denied, 435 U.S. 915 (1978);
- 3) Money orders – United States v. Weisser, 737 F.2d 729 (8th Cir. 1984), cert. denied, 469 U.S. 1158 (1985);
 - 4) Motor vehicle titles with fraudulent odometer readings – Moskal v. United States, 498 U.S. 103 (1990);
 - 5) Stocks and bonds – United States v. Anderson, 532 F.2d 1218 (9th Cir. 1976), cert. denied, 429 U.S. 839 (1976); United States v. Taylor, 802 F.2d 1108 (9th Cir. 1986), cert. denied, 479 U.S. 1094 (1987).

The courts have held that airline tickets, credit cards, credit card slips, and leases are not “securities” under ITSP. In addition, the final paragraph of Section 2314 states that the statute’s provisions do not apply to counterfeit obligations and securities of the United States or any foreign government, nor falsely made or counterfeit foreign currency. (See Title 18 U.S.C. § 8 for the statutory definition of “obligation or other security of the United States”). The reason for this exclusion of United States obligations and securities from the provisions of ITSP lies in the fact that “trafficking in counterfeits, forgeries and spurious representations of [these instruments] is made criminal elsewhere in the United States Code by anti-counterfeiting statutes”, such as Title 18 U.S.C. § 471. United States v. Robie, 166 F.3d 444, 454 (2d Cir. 1999). Finally, it should be noted that the language “falsely made, forged, altered or counterfeited securities” has been construed by the courts to **not** include ***checks with forged endorsements***. See, e.g., United States v. Tyson, 690 F.2d 9 (1st Cir. 1982) (finding the forging of an endorsement on an otherwise valid security [here, a check] does not render the security falsely made, forged, altered, or counterfeited for purposes of paragraph three of ITSP). That language however, has been held to apply to checks signed by a maker using a fictitious name, United States v. Seay, 386 F.Supp. 550 (E.D. Ill. 1974) aff’d, 518 F.2d 646 (7th Cir.) (per curiam), cert. denied, 423 U.S. 995 (1975); checks drawn on an account opened with a fictitious name, United States v. Metcalf, 388 F.2d 440 (4th Cir. 1968); checks bearing a forged signature of an authorized signatory to the account, United States v. Fletcher, 444 F.2d 619 (10th Cir. 1971); checks drawn on closed accounts, United States v. Phillips, 869 F.2d 1361 (10th Cir. 1988), cert. denied, 490 U.S. 1069 (1989); and checks bearing the actual signature of a person not

authorized to act as a signatory on the account, United States v. Fontana, 948 F.2d 796 (1st Cir. 1991). At least one court noted that a check with a forged endorsement would fall under the provisions of the first paragraph of ITSP prohibiting the interstate transport of property stolen, converted or taken by fraud, provided the \$5000 valuation requirement was met. Tyson at 16.

- c. Fraudulent Intent. The government must establish that the defendant transported the forged or counterfeit check or security with unlawful or fraudulent intent. The requisite intent may be established through the defendant's own statements and/or his participation in the scheme to transport or negotiate the securities. See, United States v. Sheridan, 329 U.S. 379 (1946) (requisite intent under predecessor to Section 2314 was met by proof that defendant cashed check drawn on out-of-state bank which he knew to be forged and which entered interstate commerce for collection); United States v. Frierson, 2000 U.S. App. LEXIS 27939 (10th Cir. 2000) (statements to witness and on audiotape concerning defendant's knowledge and evidence of his participation in scheme established requisite intent).
- d. Knowledge of Forgery or Counterfeit. To sustain a conviction under this paragraph of ITSP, the government must prove the defendant knew the security transported in interstate or foreign commerce was forged or counterfeited at the time of its transportation. See United States v. Resurreccion, 978 F.2d 759 (1st Cir. 1992) (defendant's knowledge that checks were counterfeit established in part by his statements to Customs agents indicating he hoped to obtain only 40% to 80% of the face value of certified checks drawn on a certain foreign bank). It is not necessary to prove in the case of a forged security that the defendant forged the endorsement himself; the government need only show that he knew the instruments he cashed had been forged. United States v. Solomon, 422 F.2d 1110 (7th Cir.), cert. denied, 399 U.S. 911 (1970).

- 10. Paragraph Four – The Elements: In 1968, at the prodding of the travel industry, Congress amended ITSP to prohibit the transportation in interstate or foreign commerce of traveler's checks bearing forged countersignatures. The elements of this provision are:
 - a. Transporting in interstate or foreign commerce . . .
 - b. Any traveler's check bearing a forged countersignature . . .

- c. With unlawful or fraudulent intent.
- 11. Paragraph Four – Proving the Elements:
 - a. Interstate or Foreign Commerce. See above for prior discussions on this jurisdictional requirement.
 - b. Forged Traveler's Checks. Interstate transport of traveler's checks with forged countersignatures violates this provision of ITSP. Though the plain language of the statute suggests the traveler's check must be forged and then transported in interstate commerce, the courts have found this provision violated by defendants who stole the traveler's checks, transported them over state lines, and then forged them to negotiate them in the destination state. See, United States v. Bates, 1999 U.S. App. LEXIS 221 (4th Cir. 1999); United States v. McGovern, 661 F.2d 27 (3d Cir. 1981), cert. denied, 454 U.S. 1157 (1982).
 - c. Unlawful or Fraudulent Intent. This element has not spawned much discussion by the courts as it pertains to the traveler's check provision of ITSP. It appears the defendant's unlawful or fraudulent intent is inferred from his possession and/or his negotiation of the forged documents.
- 12. Paragraph Five – The Elements: The final paragraph of ITSP prohibits the interstate transport of any tool, implement or other items used to counterfeit, alter or falsely make any security or tax stamps. While there are few reported decisions construing the elements of this proviso, the plain language of this section suggests that items used to affix authorized signatures, impress official seals or certifications, or imprint face amounts to checks and other securities would be covered if transported in interstate or foreign commerce. One court held that the paper on which a partially completed security was printed did not constitute a tool or implement within the meaning of this paragraph of ITSP.
- 13. Venue for Violations of Title 18 U.S.C. §§ 1341, 1343 and 2314. Venue for violations of the Mail Fraud statute, Wire Fraud statute and ITSP is governed by Title 18 U.S.C. § 3237, which provides in pertinent part: "Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, . . . may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves."

As a consequence of the foregoing, mail fraud cases may be brought in the district where the subject mail matter is placed in the mail stream, any district through which it travels, or the district in

which it is received by the addressee; wire fraud cases may be brought in the districts from which the transmission was sent, through which it passed, and in which it was received; and ITSP may be charged in the districts from which the stolen items or victims originated, through which they traveled, and in which they completed their journey. As a practical matter, however, the stated policy of the Department of Justice is to bring charges under these three statutes at their beginning and ending points, rather than in the districts through which the mail, transmission, victims or property merely passed.

14. Miscellaneous information concerning Mail and Wire Fraud Statutes

- a. Mail Fraud, Wire Fraud and ITSP are qualifying racketeering acts under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), Title 18 U.S.C. § 1961, United States v. Dischner, 974 F.2d 1502 (9th Cir. 1992), cert. denied, 507 U.S. 923 (1993).
- b. Under the Interstate Travel in Aid of Racketeering Act ("ITAR"), Title 18 U.S.C. § 1952, it is unlawful to travel, use the mails, or use any facility in interstate or foreign commerce to promote gambling, untaxed liquor, drugs, prostitution, arson, bribery, or crimes of violence.
- c. Most importantly, all three statutes are "specified unlawful activities" for purposes of the Money Laundering statutes, Title 18 U.S.C. §§ 1956 and 1957. Thus, any use of the illegal proceeds obtained through violations of the Mail Fraud, Wire Fraud and ITSP statutes which furthers continuing violations or conceal those crimes can be charged under various sections of the Money Laundering statutes. The penalties for violations of Sections 1956 and 1957 under the Federal Sentencing Guidelines are substantial; consequently, these charges serve as valuable bargaining chips in negotiating plea agreements with defendants.

VII. FALSE STATEMENTS / THEFT / EMBEZZLEMENT

A. RAPPORT AND OPENING STATEMENT

This course is designed for uniformed officers. It covers one MEPO identical to the CI program, to wit: MEPO #1091-11, Identify the elements of Title 18 U.S.C. § 1001. **For the false statements section of this course, the instructor should refer to MEPO #1091-11.**

Title 18 U.S.C. § 641 makes it unlawful for anyone to commit a theft, embezzlement or conversion of property belonging to the United States. The statute reads:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$1000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Under Title 18 U.S.C. § 3571, the maximum fine for the felony offense is \$250,000, and the maximum fine for the misdemeanor is \$100,000.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

EPO #11: Identify the elements of Title 18 U.S.C. § 1001. **(Refer to MEPO number 1091-11).**

EPO #24: Identify the elements of Title 18 U.S.C. § 641. **(Refer to MEPO number 1091-24).**

C. EPO #24: IDENTIFY THE ELEMENTS OF TITLE 18 U.S.C. § 641

1. Title 18 U.S.C. § 641 is a comprehensive statute designed to address four crimes which, at common law, were separate, but by this statute have been combined: Embezzlement, theft, conversion, and receiving stolen property. In each instance, for the offense to have federal jurisdiction, the item that is wrongfully appropriated must have in fact belonged to the United States. United States v. Tailan, 161 F.3d 591 (9th Cir. 1998). Items stolen from a post or

Navy exchange are government property. United States v. Towns, 842 F.2d 740 (4th Cir.), cert. denied, 487 U.S. 1240 (1988); Tailan, supra. Postage stamps that are manufactured under a government contract come within the terms of the statute. United States v. Robie, 166 F.3d 444, 452-453 (2d Cir. 1999).

- a. As an example, suppose a government employee is issued a government-owned vehicle that is to be used only for official business. One weekend, while his private vehicle is being repaired, the employee uses the government vehicle to take his wife shopping and out to dinner. What is the crime? Conversion. Is there any intent to permanently deprive the government of the property? The answer is no; however, it was a wrongful use of property belonging to the United States.
 - b. Assume that instead of taking the government vehicle for a night out with his spouse, the same employee sells the car to a friend who knows that it is the employee's government vehicle and that the employee lacks the authority to sell the car. What are the crimes? In this situation, there is theft by the employee, and receipt of stolen property by the friend. When a person responsible for processing and depositing income tax payment checks takes one, properly endorses the check, but then transfers the money from the proper government account to her personal account, the crime is embezzlement.
2. Theft of government property is the wrongful appropriation of government property by a person who has no lawful right to such property. The elements of theft of government property are:
 - a. Defendant knowingly;
 - b. Takes, carries away, or converts to the use of another;
 - c. Something of value belonging to the United States, or made under a contract with the United States.
 3. United States v. Forman, 180 F.3d 766 (6th Cir. 1999). It is not necessary that the defendant know the stolen item belongs to the United States; the prosecution need only prove that the defendant knew that he was taking something that did not belong to him, and that in fact, the item taken belongs to the United States. United States v. Crutchley, 502 F.2d 1195, 1201 (3d Cir. 1974). In order to prove that an item belongs to the United States, the government must prove that it had "title to, possession of, or control over" the item. United States v. Tailan, 161 F.3d 591, 592 (9th Cir. 1998), quoting United States v. Long, 706 F.2d 1044, 1049 (9th Cir. 1983).
 4. In the case of United States v. Robie, 166 F.3d 444 (2d Cir. 1999),

the items stolen were misprinted postage stamps manufactured by a private printer under a government contract. The court found that, due to the contract terms and the supervision that was maintained over all aspects of the printing process by the U.S. Postal Service, including maintaining strict control over all waste product, the stolen misprinted stamps were indeed property of the United States or any property made or being made under contract for the United States or any department or agency thereof, and thus the theft was properly charged under this statute.

5. When the crime alleged is a felony, one additional element must be proven: the value of the stolen item exceeds \$1,000. In Robie, supra, the primary issue was whether stolen misprinted stamps, which were never issued and scheduled for destruction, had a value reaching the felony level. There was substantial evidence that Robie had been able to dispose of the misprinted Richard Nixon stamps for over \$20,000; however, the court said that the stamps could not be valued by the price that was obtained in a "thieves market" because the value had to be set on the date of the theft, not on the date of the sale of the item. In the end, the court determined that the jury was permitted to infer that the stolen stamps had a value greater than their combined face value of \$51.20, and that the jury's finding on this element was supported by the evidence. Id. at 449-452.
6. Where it is reasonable from the facts for a defendant to believe that the government has abandoned property, and the government cannot prove otherwise, a charge of theft of government property will not succeed. Morrisette v. United States, 342 U.S. 246 (1952).
7. Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted, or into whose hands it has lawfully come. The original taking of the property is lawful, or done with the express or implied consent of the owner, but once the property is lawfully acquired, the defendant fraudulently applies the money or property to another, illegal use. The elements of embezzlement are:
 - a. The money or property belongs to the United States or an agency thereof;
 - b. The money or property came into the possession or care of the defendant lawfully;
 - c. The defendant fraudulently appropriates the money or property to his/her own use or the use of others; and
 - d. The defendant does so knowingly and willfully with the intent to either temporarily or permanently deprive the United States of the use of the money or property so taken.

8. Note that with embezzlement, the original acquisition of the property or money is lawful; there is no fraud or scheme or crime committed in the original entrustment of the money or property. It is only after the entrustment occurs that the defendant begins the fraud. The defendant must be proven to know that the money or property does not belong to the defendant, and that knowing this fact, the defendant deliberately uses the item for his/her own purpose, either temporarily or permanently depriving the government of the use of the item. If the crime is alleged to be a felony, the government must also prove that the value of the property embezzled is over \$1,000.
9. Criminal conversion is the wrongful deprivation of goods or personal property belonging to another. It includes the unlawful assumption and exercise of the right of ownership over goods or personal property belonging to another, the alteration of their condition, or the exclusion of the owner's rights. The property can be converted either permanently or for an indefinite period of time. Conversion does not require an intent to keep the property, nor does it require a wrongful taking. Conversion may include misuse or abuse of property, as well as use in an unauthorized manner or to an unauthorized extent. The elements of conversion are:
 - a. Wrongful deprivation, use or abuse;
 - b. Of goods or personal property;
 - c. Belonging to the United States.
10. Conversion of government property requires some act inconsistent with the government ownership rights in the property. The conversion may include some abuse or misuse of property, or use of government property in some unauthorized manner. There is no requirement that the defendant intend to keep the property or deprive the government of the property. There is also no requirement that the taking of the property be wrongful. If the value of the property is over \$1,000, the crime is a felony.
11. What acts do not qualify as conversions of government property? In United States v. Wilson, 636 F.2d 225 (8th Cir. 1980), Wilson used a government secretary to type personal work for him relating to a business he was establishing. Many weeks, almost 100% of the secretary's time was spent doing Wilson's personal work. Wilson told the secretary that she was not to allow his personal work to interfere with government work. No attempt was made to conceal what was happening. This all took place during a period when there was almost no government work to be done, due to a reorganization. On these facts, the court held that the government had not shown that Wilson possessed the intent required for a conviction under Title 18 U.S.C. § 641, because he had not

interfered with the rights of the government to the secretary's work.

12. Receipt of stolen property can be charged when a person knowingly receives or buys stolen property with intent to keep for his or her own use or gain (i.e., to sell for profit). In addition, the statute allows a person to be charged with receipt of stolen property when that person knowingly receives property that the person knows is stolen. The person receiving the stolen property does not need to know that the stolen property belongs to the United States, but only that the property is stolen. If the value of the property is over \$1,000, the crime is a felony.

VIII. FALSE STATEMENTS / THEFT / EMBEZZLEMENT/ FINANCIAL INTEREST / FALSE CLAIMS / PROGRAM THEFT /

A. RAPPORT AND OPENING STATEMENT

This course is designed Air Force OSI agents already in the field that did not receive the current CITP course. **It covers EPO's #11 and #24, in addition to those presented below.**

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

EPO #11: Identify the elements of Title 18 U.S.C. § 1001. **(Refer to EPO number 11).**

EPO #24: Identify the elements of Title 18 U.S.C. § 641.

EPO #25 : Identify the elements of ACTS AFFECTING A PERSONAL FINANCIAL INTEREST, title 18 U.S.C. § 208.

EPO #26: Identify the elements of FALSE CLAIMS, title 18 U.S.C. § 287.

EPO #27: Identify the elements of THEFT OR BRIBERY CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS, title 18 U.S.C. § 666.

C. EPO #25 : IDENTIFY THE ELEMENTS OF ACTS AFFECTING A PERSONAL FINANCIAL INTEREST, TITLE 18 U.S.C. § 208

1. Title 18 U.S.C. § 208

...whoever, being an officer or employee of the executive branch of the United States Government... participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he... has a financial interest--

Shall be subject to the penalties set forth in section 216 of this title [18 USC § 216].

[see full text of statute for other specifics and exceptions]

2. Elements of Title 18 U.S.C. § 208

- a. Defendant was an officer or employee of (here name department or agency); and

- b. Defendant, in (his/ her) capacity as an employee or officer of the government, participated personally and substantially in a matter in which (he/she) knew that [(he/she) personally, some member of his family, some organization in which (he/she) had an interest] had a substantial financial interest [or with which (he/she) was negotiating or had arranged for employment].
- 3. The purpose of the law is to prevent persons who work with the government from profiting from this relationship by private arrangements with organizations with which the government does business. It does not, however, make criminal every contact or connection between an agent of the United States government and a private organization, but only contacts which are significant. Similarly, the statute does not prevent an agent of the United States government from having any investment whatsoever in an organization with which the government does business, but only an investment which is substantial. On the other hand, the statute is violated regardless of whether the United States loses any money as a result of a defendant's conflict of interest. It is the conflict itself which violates the law and not the injury to the United States. United States v Mississippi Valley Generating Co., 364 US 520 (1961), reh den 365 US 855 (1961); San Francisco v United States, 615 F2d 498 (9th Cir. 1980); Seventh Circuit Pattern Criminal Federal Jury Instructions at 125 (1999).
- 4. *Officer or employee of the executive branch of the United States Government.*
 - a. This term includes not only those in the common sense, but is defined in 18 U.S.C. § 202 to also include Reserve military officers voluntarily serving extended active duty of more than 130 days. Enlisted military members are specifically excluded from this definition.
 - b. Case Examples:
 - 1) Person is "officer or agent of the United States for the transaction of business" within meaning of § 208 even though government consultant has taken no oath of office, has no tenure, receives no salary, and is permitted to continue in position as officer of corporation. United States v Mississippi Valley Generating Co., 364 US 520 (1961), reh den

855 (1961) .

- 2) Officer or agent of United States who is administrative head of office which to his knowledge negotiates and enters into contracts with particular business entity, but who does not personally participate in such negotiations or execution of such contracts, and who does not give any particular instructions with regard to those dealings to his subordinates who carry on such dealings under blanket authority, may be found to have engaged in "transaction of business" with such entity within meaning of § 208. Smith v United States, 305 F2d 197 (9th Cir. 1962), cert den 371 US 890 (1962) and cert den 371 US 890 (1962).
- 3) Defendant was "employee" of District of Columbia when he served as chief of day programs at District's day treatment center for mentally retarded and developmentally disabled persons. United States v Smith, 267 F3d 1154 (D.C.C. 2001).
5. *Special government employees.* Unlike § 209, this statute does apply to "special government employees." A "special government employee" is defined in 18 U.S.C. § 202 generally as one who performs temporary--even if full-time-- duties, with or without government compensation, for a period not to exceed 130 days during any 365 consecutive days. This term includes Reserve military officers serving involuntarily active duty or active duty solely for training. Enlisted military members are specifically excluded from this definition. See also the Seventh Circuit Pattern Criminal Federal Jury Instructions at 125 (1999).
6. *Departments and agencies of the United States.* The term "department" is defined in Title 18 U.S.C. § 6 and means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government. Similarly, the term "agency" is defined in Title 18 U.S.C. § 6 and includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.
7. *Transaction of business.*

a. Case Examples:

1) In General

Phrase "transaction of business" within meaning of § 208 was intended to include any official role played by officer or agent of United States, in connection with dealings between government agency and business entity which reasonably could have been utilized to advance personal pecuniary interest to disadvantage of United States. Smith v United States, 305 F2d 197 (9th Cir. 1962), cert den 371 US 890 (1962) and cert den 371 US 890 (1962).

2) Employment

- (a) Violation of § 208 occurs where person who is civil servant of long tenure, while officially engaged in his duties negotiates for and consummates agreement of employment with private firm, to become effective upon his government retirement. United States v Conlon, 661 F2d 235 (1981), cert den 454 US 1149 (1982).
- (b) Air Force reserve officer "negotiated" with prospective corporate employer within meaning of § 208 during period in which he had conflict of interest, where he approached prospective employer, filled out application, came for interview, discussed qualifications and indicated willingness to meet them, even though neither side had made formal offer until after he was finished with project which caused conflict of interest, since his purpose in applying and interviewing was in effect to offer himself to prospective employer. United States v Schaltenbrand, 930 F2d 1554 (11th Cir. 1991), reh, en banc, den 942 F2d 798 and cert den 112 S Ct 640 (1991).

3) Personal interest or benefit.

- (a) Government agent is "directly or indirectly interested in pecuniary profits or contracts" of corporation within meaning of § 208 where it

appears agent was officer and executive of corporation, that he not only shared in profits which corporation made during year but also received bonus. United States v Mississippi Valley Generating Co., 364 US 520 (1961), reh den 365 US 855 (1961).

- (b) Financial interest need not be probable so long as possibility of financial loss or gain as result of defendant's official action was real and not speculative. United States v Gorman, 807 F2d 1299 (6th Cir. 1986), cert den 484 US 815 (1987).
- (c) Executive branch employee knowingly had "financial interest" in government contracts where construction company entered into agreement with him to pay him certain percentage of profits realized on all contracts which company would obtain from government. K & R Engineering Co. v United States, 616 F2d 469 (Ct. Cl. 1980).

8. *Statutory Defenses.*

- a. Prior written approval of the government official responsible for appointment to his or her position after full disclosure. § 208(b)(1).
- b. Transaction is exempted by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register. § 208(b)(2).
- c. In the case of a special government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act, the official responsible for the employee's appointment, after full disclosure, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved. § 208(b)(3).
- d. Matters involving Indian Tribes, Indian allotments, Indian claims. § 208(b)(4).

9. *Intent.* This is a strict liability statute, general intent crime which requires no showing of corrupt state of mind. Specific intent, if

proven, distinguishes the misdemeanor and felony levels of the crime.

a. Case examples.

- 1) Section 208 established objective standard of conduct. Whether there is actual corruption on official's part is immaterial. Fact that government agent's activities did not adversely affect government in any way is irrelevant to consideration of whether he violated § 208, since statute lays down absolute standard of conduct which is violated by entering into relationship which makes it difficult for agent to represent government with singleness of purpose required. United States v Mississippi Valley Generating Co., 364 US 520 (1961), reh den 365 US 855 (1961).
- 2) Section 208 is strict liability statute for which scienter is not element. United States v Hedges, 912 F2d 1397 (11th Cir. 1990).
- 3) Program manager, convicted of conflicts of interest and obstruction of justice, is not entitled to new trial, despite general intent instruction given jury with respect to conflict of interest laws, because legislative history, other cases, and related statutes indicate that specific intent is not requisite element of § 208(a). United States v Lord, 710 F. Supp 615 (E.D.Va. 1989), aff'd without op, 902 F2d 1567 (4th Cir. 1990).

10. *Penalties.*

a. Criminal.

- 1) A misdemeanor when only general intent is proven:

Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both. Title 18 USC § 216 (a)(1).

- 2) A felony when specific intent is proven:

Whoever willfully engages in the conduct constituting the offense shall be imprisoned for

not more than five years or fined in the amount set forth in this title, or both. Title 18 USC § 216 (a)(2).

b. Civil.

Fines equaling the greater of \$50,000.00 for each violation or the amount of compensation which the person received or offered for the prohibited conduct. Court ordered injunctions are also available along with administrative suspension and/or debarment. Violations may also affect the enforceability of underlying contracts.

- 1) Contracts made in violation of § 208 are not enforceable, even though party seeking enforcement ostensibly appears entirely innocent; in determining whether contract tainted by violation of § 208 renders contracts unenforceable, fact that § 208 does not specifically provide for invalidation of contracts is not determinate since statute frequently implies that contract is not to be enforced when it arises out of circumstances that would lead enforcement to offend essential purpose. United States v Mississippi Valley Generating Co., 364 US 520 (1961), reh den 365 US 855 (1961).
- 2) Employment contract between plaintiff former government employee and defendant private corporation was not enforceable where arrangement was in clear violation of § 208. Jordan v Axicom Systems, Inc., 351 F Supp 1134 (D.D.C. 1972), affd without op 489 F2d 1272 (D.C.C. 1974).
- 3) Conflict-of-interest by officer of Corps of Engineers with financial interest in contract is grounds for terminating contract without damages against government, whether or not conviction is had or any financial loss to government

is shown and government may recover amounts paid under contract. K & R Engineering Co., Inc. v The United States, Ct Cl No. 84-77, Feb. 20, 1980.

- 4) Contracting agency did not act in arbitrary or irrational manner where it rejected bid from corporation, despite fact that corporation had best bid, because of appearance of impropriety caused by bidder's employment of individual from agency who had participated in bidding process and had insider information. NKF Engineering, Inc. v United States, 805 F2d 372 (Fed. Cir. 1986)

D. EPO #26: IDENTIFY THE ELEMENTS OF FALSE CLAIMS, TITLE 18 U.S.C. § 287

1. Title 18 U.S.C. § 287

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

2. Elements of Title 18 U.S.C. § 287

- a. Defendant made or presented to any person or officer in the civil, military, or naval service of the United States, or to any department or agency
- b. A claim upon or against the United States, or any department or agency
- c. Knowing such claim to be false, fictitious, or fraudulent.

3. *Departments and agencies of the United States.* The term "department" is defined in Title 18 U.S.C. § 6 and means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government. Similarly, the term "agency" is defined in Title 18 U.S.C. § 6 and includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary

interest, unless the context shows that such term was intended to be used in a more limited sense.

4. *Makes or presents a claim against the United States Government.* It is necessary to show that the claim was presented against the United States. However, the mens rea element does not require defendant to know he is presenting claim to the federal government. To be convicted of willfully causing intermediary to present false claim to federal department under Title 18 USC §§ 2(b) and 287, the defendant must at least know he is causing intermediary to present false claim to someone. Evidence was insufficient, where there was no evidence defendant knew his contract was funded by anyone other than Government of Virgin Islands. United States v Gumbs, 283 F3d 128 (3rd Cir. 2002).

a. Case Examples:

- 1) Defendant's contention that since claim forms executed by his corporation were submitted to insurance company, and not directly to Department of Health, Education and Welfare, government failed to prove filing of any false claim with agency of United States is without merit since insurance companies were mere contractors of HEW for servicing of medical claims. United States v Precision Medical Laboratories, Inc., 593 F2d 434 (2nd Cir. 1978).
- 2) Defendant's conviction for fraudulently submitting false medicare claims to private insurance carriers with reimbursement contracts with United States is affirmed, notwithstanding defendant's contention that carriers were not agencies of United States, since indictment and proof were sufficient to sustain conviction on theory that defendant had "caused" carriers themselves to submit his false claims to federal agencies. United States v Catena, 500 F2d 1319 (3rd Cir. 1974), cert den 419 US 1047 (1974).
- 3) False claims submitted to state when claimants knew that state would rely on these claims for reimbursement from Federal Government pursuant to joint federal-state program fall within Title 18 USC § 287. United States v Beasley, 550 F2d 261 (5th Cir. 1977), cert den 434 US 863 (1977), reh den 434 US 961 (1977) and cert den 434 US 938 (1977).

- 4) Fact that state was required to account to federal government for moneys spent is sufficient federal control for Title 18 USC § 287 jurisdiction, and defendant's awareness that funds ultimately would be provided by federal agency is irrelevant. United States v Montoya, 716 F2d 1340 (10th Cir. 1983).
5. *Claim.* Although § 287 does not define "claim," the United States Supreme court wrote: "While the word 'claim' may sometimes be used in the broad juridical sense of a 'demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty,' it is clear, in the light of the entire context, that in the present statute, the provision relating to the payment or approval of a 'claim upon or against' the government relates solely to the payment or approval of a claim for money or property to which a right is asserted against the government, based upon the government's own liability to the claimant." United States v. Cohn, 270 U.S. 339, 345 (1926).

In United States v. Neifert-White Co., 390 U.S. 228 (1968), the Supreme Court held that the term "claim" is to be read broadly, so that it covers "all fraudulent attempts to cause the Government to pay out sums of money."

6. *False, fictitious, or fraudulent.* A claim is "false" or "fictitious" if any part of it is untrue at the time it is made and is then known to be untrue by the person making it or causing it to be made. A claim is "fraudulent" if any part of it is known to be untrue, and it is made or caused to be made with the intent to deceive the government agency to which it was submitted. It is not necessary to show, however, that the Government agency was in fact deceived or misled.

See 2 Edward J. Devitt, et al., *FEDERAL JURY PRACTICE AND INSTRUCTIONS: Criminal* § 37.08 (4th ed. 1990); Seventh Circuit Federal Jury Instructions: Criminal at 163-65 (1999); Eleventh Circuit Pattern Jury Instructions: Criminal (Offense) § 9 (1997); United States v. Milton, 602 F.2d 231, 233 (9th Cir. 1979).

7. Evidence of a Knowing Submission of a False, Fictitious or Fraudulent Claim
 - a. Case Example:
 - 1) In order for a prosecution to be successful, the United States must prove that the defendant presented or caused to be presented a claim on or against the United States and that the defendant knew at the time

that the claim was presented it was a false, fictitious or fraudulent claim. Knowledge and intent may be inferred from objective facts and the actions of the defendant, and from circumstantial evidence. United States v. Ward, 1999 U.S. App. LEXIS 9255 (9th Cir., 1999). (This is an unpublished opinion.)

8. *Materiality of Claim.* “Material” is defined as having the natural tendency to influence, or be capable of influencing, the decision maker. Section 287, unlike Title 18 U.S.C. § 1001, does not expressly state that “materiality” is an essential element of the offense. The circuits are split as to whether the false, fictitious or fraudulent claim must be material.

The Fourth and Eighth Circuits hold that materiality is an element of a violation under Title 18 USC § 287. United States v. Pruitt, 702 F.2d 152 (8th Cir. 1983); United States v. Snider, 502 F.2d 645, 652 n.12 (4th Cir. 1974). The Second, Fifth, Ninth, and Tenth Circuits hold that materiality is not an element under Title 18 USC § 287. United States v. Upton, 91 F.3d 677 (5th Cir. 1996); United States v. Taylor, 66 F.3d 254 (9th Cir. 1995); United States v. Parsons, 967 F.2d 452 (10th Cir. 1992); United States v. Elkin, 731 F.2d 1005 (2nd Cir. 1984). The Eleventh Circuit had explicitly avoided deciding whether materiality is an element under Title 18 USC § 287. United States v. White, 27 F.3d 1531 (11th Cir. 1994).

Section 287 expressly incorporates the term “fraudulent” in conjunction with the term “false.” The Supreme Court held in Neder v. United States, 527 U.S. 1 (1999) that use of the words “fraud” or “fraudulently” as terms of art in Title 18 USC §§ 1341, 1343, and 1344 incorporated the common law requirement that proof of fraud necessitates proof of misrepresentation or concealment of a material fact. (emphasis added). And in United States v. Gaudin, 515 U.S. 506 (1995), the court held that when materiality is an essential element of an offense, it must be submitted to the jury.

E. EPO #27: IDENTIFY THE ELEMENTS OF THEFT OR BRIBERY CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS, TITLE 18 U.S.C. § 666

1. Title 18 U.S.C. § 666

(a) Whoever, if the circumstance described in subsection (b) of this section exists--

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that--

(i) is valued at \$ 5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$ 5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$ 5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$ 10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

[see full text of statute for specific definitions]

2. Elements of Title 18 U.S.C. § 666

Elements common to both Theft and Bribery offenses under this statute

- a. Whoever being an agent of
- b. An organization, or a State, local, or Indian Tribal government, or any agency thereof
- c. That receives more than \$10,000.00 in Federal funds through grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance in any one year period

Elements specific to Theft

- a. Embezzles, steals, obtains by fraud, converts, or misapplies
- b. Property owned by or in the care, custody, control of the organization, government, or agency
- c. Of a value of \$5,000.00 or more.

Elements specific to Bribery

- a. Solicits, demands, accepts, or agrees to accept from any person, or
- b. Whoever gives, offers, or agrees to give to such "agent"
- c. Anything of value
- d. With the intent to be influenced or rewarded or with the intent to influence or reward
- e. In connection with any business, transaction, or series of transactions of the organization, government, or agency
- f. involving anything of a value of \$5,000.00 or more.
- g. Case Example

- 1) Section § 666(c) should be construed to apply not only to bribery but to giving of gratuities as well, since 18 U.S.C. § 201, which § 666(c) was enacted to supplement, applies to both. United States v Crozier, 987 F2d 893 (2nd Cir. 1993), cert den 114 S Ct 222 (1993); United States v Bonito, 57 F3d 167 (2nd Cir. 1995).

2. Titles 18 U.S.C. § 666 and § 641 distinguished.

- a. As an element of § 641, the government must prove that the property taken, embezzled, converted, or received belonged to the United States.

- b. As an element of § 666, the government need not prove that the property taken, embezzled, converted, or received belonged to the United States.

- c. Case Examples:

- 1) See Sabri v. United States, below. Although Sabri was a bribery case, its federal nexus issues and resolution apply equally as well to

these federal nexus issues.

- 2) Evidence was sufficient to convict rabbi of misapplication of bank funds under § 666, where there was sufficient physical evidence and testimony from which jury could infer that grant monies from community organization never reached their intended designee, computer school, but that those checks totaling \$ 10,500 had been cashed for rabbi's personal benefit. United States v Naiman, 211 F3d 40 (2nd Cir. 2000).
- 3) Section 666 was not unconstitutionally vague as to sheriff's deputies who stole nearly \$ 3 million in confiscated drug money, since statute described offense with sufficient definiteness that ordinary people could understand what conduct was prohibited and in manner that did not encourage arbitrary and discriminatory enforcement. United States v Nichols, 40 F3d 999 (9th Cir. 1994).

3. Titles 18 U.S.C. § 666 and § 201 distinguished.

a. As an element of § 201, the government must prove that the person from whom the bribe was demanded or to whom it was offered was a "public official" as defined by that statute. Also, there must be a Federal nexus between what is offered/accepted and what is expected in return. In other words, it must relate to official duties.

b. As an element of § 666, the government must prove that the person from whom the bribe was demanded or to whom it was offered was an "agent." The government need not prove that such person was a "public official." The government need not prove that the bribe was directly related to Federal business.

c. Case Examples:

- 1) Congress has Spending Clause authority to appropriate federal moneys to promote the general welfare, Art. I, §8, cl. 1, and corresponding Necessary and Proper Clause authority, Art. I, §8, cl. 18, to assure that taxpayer dollars appropriated under that power are in fact spent for the general welfare, rather than frittered away in graft or upon projects undermined by graft.

Money is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value. It is enough that the statute condition an offense on a threshold amount of federal dollars to the local government such as that provided here and a bribe.

Section 666(a)(2) addresses the problem at the sources of bribes, by rational means, to safeguard the integrity of federal dollar recipients. Sabri v. United States, 541 U.S. 600 (2004).

- 2) Payoffs made by largest airport concessionaire to city council member in exchange for share in "fees and dividends" violated § 666 even though only private or local monies were affected, since city council member was agent of local governmental agency receiving annual benefit of more than \$ 10,00 under federal assistance program. United States v Paradies, 98 F3d 1266 (11th Cir. 1996).
- 3) County clerk could be guilty of embezzlement from county which received more than \$ 10,000 in federal funds per year, since, for purposes of § 666, he was agent of entity which received federal money, where he was required to turn over money he received to county treasury. United States v Trost, 152 F3d 715 (7th Cir. 1998).
- 4) Evidence was sufficient to prove that lawyer agreed to pay judge's lunch bills in exchange for court appointments, in violation of § 666, where witness testified that lawyer had told him "a couple of thousand dollars could open some doors" with judge, and where he was receiving appointments to cases from judge during period in which he was paying lunch bills but not during period in which he wasn't. United States v Massey, 89 F3d 1433 (11th Cir. 1996), reh, en banc, den 98 F3d 1355 (11th Cir. 1996).

IX. SUMMARY

A. REVIEW OF PERFORMANCE OBJECTIVES

Each of the following sessions is taught as an individual course. The Instructor must remember to cover all of the material contained within that individual course during the time assigned for that course.

B. REVIEW OF TEACHING POINTS

The Instructor should refer to each EPO and session for the teaching points to be reviewed at the end of that session.

TEST ITEM CONTROL SHEET (TICS)

COURSE NUMBER: 1091 COURSE TITLE: FEDERAL CRIMINAL LAW
 POINT OF CONTACT AND EXTENSION: (b)(7)(C);(b)(6) DATE: DEC 2007

Instructions: If a course is taught in sessions, put the EXAM number (E01, E02, E03, etc...) that the EPO will be tested on in the EDT. If all EPO's are tested on one exam, place an X in each box instead of the exam number. Using the test item numbers EAD has provided, complete the table below. Every EPO tested by multiple choice exam must be represented in each set with **one** test item. If an EPO is tested by PE or not tested at all put PE or NA in that corresponding EPO row in the program box. A TICS and EDT is required for all courses tested at all FLETC locations. Use more than one form if necessary.

Exam Distribution Table (EDT)

Programs **testing** each EPO by
Multiple choice exam or PE

EPO	Set A	Set B	Set C	Set D	SET E	UPTP	LMPT	CITP	ICE_D	A_BPOTP
1.	I02891	I02899	I05254	I05154	I03086	E05	E05	E01	E02	E01
2.	I02895	I02897	I06477	I06478	I06479	E05	E05	E01	E02	E01
3.	I00742	I06480	I06481	I06482	I06483	E05	E05	E01	E02	E01
4.	I02999	I06484	I06485	I06486	I06487	E05	E05	E01	E02	E01
5.	I03000	I01235	I01237	I01233	I06488	E05	E05	E01	E02	E01
6.	I01330	I01335	I01336	I06227	I06489	E05	E05	E01	E02	E01
7.	I01331	I01337	I02270	I06228	I06490	E05	E05	E01	E02	E01
8.	I03443	I03444	I03432	I05715	I05716	E05	E05	E01	E02	E01
9.	I02204	I02208	I05261	I05262	I06491	NA	NA	E03	E02	-
10.	I02203	I02205	I02206	I02207	I05260	NA	NA	E03	E02	-
11.	I02193	I02192	I02191	I06492	I06493	E02	E05	E03	E02	-
12.	I07049	I01780	I01765	I05243	I06494	NA	NA	E03	NA	E01
13.	I07575	I01779	I01776	I01775	I01761	NA	NA	E03	NA	E01
14.	I01755	I01771	I07050	I05543	I01772	NA	NA	E03	NA	E01
15.	I01756	I01764	I05245	I05244	I01763	NA	NA	E03	NA	E01
16.	I01754	I05247	I01760	I05246	I06495	NA	NA	NA	NA	-
17.	I07048	I01757	I01777	I06496	I06497	NA	NA	E03	NA	E01

18.	I01788	I01791	I05454	I01795	I01790	E05	E05	E03	NA	E01
19.	I02941	I02946	I05319	I06498	I06499	NA	NA	E03	NA	-
20.	I02949	I05320	I05408	I05409	I05410	NA	NA	E03	NA	-
21.	I05411	I05412	I05413	I05321	I02947	NA	NA	E03	NA	-
22.	I02195	I02196	I01784	I06500	I06501	NA	NA	E05	NA	-
23.	I06502	I06503	I06504	I06505	I06506	NA	NA	E05	NA	-
24.	I02137	I02138	I02139	I06507	I06508	E05	E05	E03	NA	-

Implementation Instructions for EAD:

Program Name	Date for item implementation	Use in all classes after class #	Special Instructions
ALL except A_BPOTP	ASAP		ALL PROGRAMS AS OF MARCH 2007
A_BPOTP	For programs starting on and after 28 Jan 08		

TABLE OF AUTHORITIES

INTRODUCTION TO CRIMINAL LAW/ASSAULT/BRIBERY

Amaya v. United States, 247 F.2d 947 (9th Cir. 1957)
Eagleston v. United States, 172 F.2d 194 (9th Cir. 1949)
Hone Wu v. United States, 60 F.2d 189 (7th Cir. 1932)
Hurley v. United States, 192 F.2d 297 (4th Cir. 1951)
Long v. United States, 199 F.2d 717 (4th Cir. 1987)
Medlin v. United States, 207 F.2d 33 (D.C. Cir. 1953)
State v. Chun, 347 F.2d 717 (4th Cir. 1965)
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DEPARTMENT OF HOMELAND SECURITY
FEDERAL LAW ENFORCEMENT TRAINING CENTER
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Homeland Security

LESSON PLAN

FEDERAL CRIMINAL LAW	
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SYLLABUS

COURSE TITLE: FEDERAL CRIMINAL LAW

COURSE NUMBER: 1091

COURSE DATE: JUN/08

LENGTH OF PRESENTATION:

	LECTURE	LAB	P.E.	TOTAL	PROGRAM
A	14:00			14:00	CITP
B	2:00			2:00	TSA-BTP; GSAFPS, GSAFPS-LI, USMP-IS, NNSSA
C	6:00			6:00	LMPT, UPTP, A_FAMTP
D	2:00			2:00	ICITP
E	6:00			6:00	TSA-TEOTP
F	12:00			12:00	TSA-SATP
G	6:00			6:00	ICE-D
H	4:00			4:00	FWSLWIBS
I	8:00			8:00	A_BPOTP

DESCRIPTION:

Through lecture and discussion, this course provides the student with an introduction to criminal law and selected Federal offenses. This course is actually a series of independently taught sessions. These course sessions may be taught by different instructors, so it is imperative that all objectives are covered during the time scheduled. This Lesson Plan covers courses to be provided to many different types of federal officers. Because of this, the EPOs are outlined below with a designation as to which EPOs are to be taught in each course. A generalized outline of course sessions has also been provided for the benefit of the instructor. These should be used only as a general guide. The EPO list should be referred to in determining precisely what material to teach to a specific student group. Instructors will be best served if they treat this Lesson Plan as an encyclopedia of several different courses, the course sessions as a rough guide, and the EPO list as the definitive list of material to cover in a particular course.

TERMINAL PERFORMANCE OBJECTIVE (TPO):

Given a set of facts depicting possible violations of major statutory offenses, the student will identify whether a crime is alleged and determine, if so, whether all elements of the crime are present in accordance with Federal statutes.

ENABLING PERFORMANCE OBJECTIVES (EPO):

Master EPO	EPO	Numbers indicate the session(s) in which the EPO is taught.								
Introduction to Criminal Law / Assault / Bribery (2 hours)		A	B	C	D	E	F	G	H	I
1	Identify the elements of a criminal statute.	1	X	1	X			1	1	X
2	Distinguish between a felony and a misdemeanor.	1	X	1				1	1	X
3	Identify how the Assimilative Crimes Act is applied and distinguish between exclusive, concurrent, and proprietary jurisdiction.	1	X	1				1	1	X
4	Identify the elements of Title 18 U.S.C. § 111.	1	X	1	X			1	1	X
5	Identify the elements of Title 18 U.S.C. § 201.	1	X	1				1	1	X
Federal Firearms Violations (2 hours)		A	B	C	D	E	F	G	H	I
6	Identify categories of individuals prohibited from possessing firearms.	2		2		1	1	2		X
7	Identify procedures to initiate a firearms trace through the Bureau of Alcohol, Tobacco, & Firearms.	2		2		1	1	2		X
8	Identify the weapons listed in Title 18 U.S.C. § 922(a)(4) that require registration with the Bureau of Alcohol, Tobacco, & Firearms and those weapons prohibited on a federal facility.	2		2		1	1	2		X
Parties (1 hour - included in Conspiracy with Option A; included with Federal Firearms Violations with Option C)										
18	Identify when a person may be prosecuted for assisting another in the commission of a crime, in accordance with Title 18 U.S.C. §§ 2-4.	4/5		2	X		3/4			X
Entrapment (1 hour - often taught in a two hour block with False Statements)		A	B	C	D	E	F	G	H	I
9	Recognize when an inducement by the government is permitted or prohibited.	3					2	3		
10	Recognize when predisposition negates an apparent entrapment defense.	3					2	3		

False Statements (1 hour - see EPO #24 for UPTP and LMTP)		A	B	C	D	E	F	G	H	I
11	Identify the elements of Title 18 U.S.C. § 1001...	3		3	X	2	2	3	2	
Conspiracy (4 hours) (EPO 18 is ordinarily taught with Conspiracy. Check that EPO.)		A	B	C	D	E	F	G	H	I
12	Identify how many persons are needed to form a conspiracy.	4/ 5					3/ 4			X
13	Identify when knowledge and intent are sufficient to constitute a conspiracy.	4/ 5					3/ 4			X
14	Recognize an agreement and its functions according to the provisions of Title 18 U.S.C. § 371.	4/ 5					3/ 4			X
15	Recognize the function of an overt act in the crime of conspiracy.	4/ 5					3/ 4			X
16	Identify when a co-conspirator's statement may be used during the prosecution of a conspiracy. [Not currently taught in any program]									
17	Identify the limits of the withdrawer's or late joiner's criminal liability.	4/ 5					3/ 4			X
Parties (1. hour)		A	B	C	D	E	F	G	H	I
18	Identify when a person may be prosecuted for assisting another in the commission of a crime, in accordance with Title 18 U.S.C. §§ 2-4.	4/ 5		2	X		3/ 4			
Obstruction of Justice (2 hours)		A	B	C	D	E	F	G	H	I
19	Identify conduct that can be prosecuted under Title 18 U.S.C. §§ 1503 and 1510.	6					5			
20	Identify the groups of persons who are protected under Title 18 U.S.C. §§ 1512 and 1513...	6					5			
21	Identify conduct that constitutes "tampering," in violation of Title 18 U.S.C. § 1512 and conduct that constitutes "retaliation" in violation of Title 18 U.S.C. § 1513.	6					5			

Federal Fraud Statutes (2 hours)		A	B	C	D	E	F	G	H	I
22	Identify the elements of the Mail Fraud statute, Title 18 U.S.C. § 1341 and the Wire Fraud Statute, Title 18 U.S.C. § 1343.	7					6			
23	Identify the elements of the National Stolen Property Act, Title 18 U.S.C. § 2314.	7					6			
Theft / Embezzlement (2 hours - include EPO #11 when teaching this as a block)		A	B	C	D	E	F	G	H	I
24	Identify the elements of Title 18 U.S.C. § 641.	C B T.		3		2			2	

STUDENT SPECIAL REQUIREMENTS:

For each Session, students will refer to the corresponding section of the student text.

METHOD OF EVALUATION:

Written, multiple-choice examination.

INSTRUCTOR GUIDE

METHODOLOGIES:

1. Lecture
2. Question and answer

TRAINING AIDS:

1. Instructor
PowerPoint / Overhead Projector
2. Student:
Student text

SPECIAL INSTRUCTOR REQUIREMENTS:

NONE

OUTLINE OF INSTRUCTION

I. INTRODUCTION TO CRIMINAL LAW / ASSAULT / BRIBERY

A. RAPPORT AND OPENING STATEMENT

1. Criminal law is a very broad legal area. While officers should strive to learn every aspect of criminal law which applies to their job, it is not possible for a new officer to become an expert in criminal law during a brief training period. This course provides an overview of the fundamentals of criminal law and training on selected Federal criminal offenses.
2. This first block of instruction covers Introduction to Criminal Law, Assault, and Bribery. Bribery (18 U.S.C. § 201) is not an EPO for all students. Instructors should refer to the master list and teach the Bribery EPO only to those students who are required to receive this instruction.

B. ENABLING PERFORMANCE OBJECTIVES

EPO #1: Identify the elements of a criminal statute.

EPO #2: Distinguish between a felony and a misdemeanor

EPO #3: Identify how the Assimilative Crimes Act is applied and distinguish between exclusive, concurrent, and proprietary jurisdiction.

EPO #4: Identify the elements of Title 18 U.S.C. § 111.

EPO #5: Identify the elements of Title 18 U.S.C. § 201.

C. EPO #1: IDENTIFY THE ELEMENTS OF A CRIMINAL STATUTE

1. Criminal law is a foundation of the criminal justice system. The subject of criminal law studies what actions are criminally punishable by the government. A crime is an act, or failure to act, punishable by the government. Typical crimes include robbery, rape, burglary, and murder. Crimes are different from torts in that criminal actions are brought by the government for the purpose of punishing the wrongdoer and deterring others from similar conduct. A tort is a civil action for compensation. For example, if a criminal committed a burglary, the government could prosecute him and place him in jail. In a tort action, the victim could sue the wrongdoer for an intentional tort to recover his stolen items.
2. All criminal statutes in the United States are in writing. Each statute contains elements, or components. Each of these elements must be met for the crime to have been completed. At trial the prosecution must prove all the elements of a crime beyond a reasonable doubt to obtain a conviction. Most crimes require a criminal intent and criminal act. In

other words, an individual must both intend to commit a crime and then act in furtherance of that intent. However, that is not true in all cases. For example, a parent could be criminally charged with child abuse for not acting to care for his child.

3. Motive is a very important fact for the investigator and prosecutor. It can be used to solve crimes by identifying potential perpetrators and to prove criminal intent. However, motive is usually never an element of a crime. So-called "hate crime" legislation aimed at those who target certain individuals for assault (minorities, homosexuals, etc.) is an exception to this rule. While brief reference may be made to these laws in class, the issues raised by considering motive in prosecuting "hate crimes" is beyond the scope of this course.
4. The elements of crimes are best explained by example. The federal crime of murder, 18 U.S.C. § 1111 requires "the unlawful killing of a human being with malice aforethought." Murder requires a criminal intent, malice aforethought. Murder also requires a criminal act, to wit: the unlawful killing of a human being. This statutory construction is typical of criminal statutes in the United States.
5. All criminal statutes also require a penalty. Without penalties, our criminal system would have no meaning. These penalties can include fines, probation, incarceration and death. Most criminal statutes provide a range of potential penalties, based on the severity of the offense.

D. EPO #2: DISTINGUISH BETWEEN A FELONY AND A MISDEMEANOR

1. Crimes are distinguished by the potential penalty faced by the criminal. In general, both the federal government and the States define a felony as an offense punishable by over one year in prison. A misdemeanor is an offense punishable by no more than a year in prison.
2. 18 U.S.C. § 3559 specifically classifies federal sentences. A felony is an offense for which the maximum term of imprisonment authorized is more than one year. A misdemeanor is an offense for which the maximum term of imprisonment is one year or less.

E. EPO #3: IDENTIFY HOW THE ASSIMILATIVE CRIMES ACT IS APPLIED AND DISTINGUISH BETWEEN EXCLUSIVE, CONCURRENT AND PROPRIETARY JURISDICTION

1. Jurisdiction relates to the legal authority to act where the crime was committed. The authority of the United States (and therefore its law enforcement officers) depends on the type of jurisdiction applicable to a certain area. Within the boundaries of the United States, there are three basic types of jurisdiction. These are exclusive jurisdiction, concurrent jurisdiction, and proprietary jurisdiction. Before examining

jurisdiction it is necessary to determine what type of federal law is to be enforced.

2. Types of Federal Laws

- a. Laws of General Application: Laws passed by Congress that are "necessary and proper" for the conduct of its business. (There is some federal connection, and regardless of where the crime occurs, the defendant can be prosecuted by the Federal Government).
- b. Examples of laws of general application: 18 U.S.C. 111 Assault on Federal Employee; 18 U.S.C. 641 Theft of Government Property; 18 U.S.C. 371 Conspiracy; 18 U.S.C. 201 Bribery; 18 U.S.C. 1001 False Statements.
- c. Other Federal Laws: where the location of the offense matters. These statutes only apply on certain federal land where the federal government has jurisdiction.
- d. Examples: 18 U.S.C. 1852 Timber removed or transported (. . . that is growing on the public lands of the United States . . .); 18 U.S.C. 1853 Trees cut or injured (. . . growing upon any land of the United States . . .); 18 U.S.C. 661 Theft of Non-Government Property (within the special maritime and territorial jurisdiction) of the United States.

3. Federal Jurisdiction: There are several ways the Federal government obtains the right to enforce its laws on land acquired within a state.

a. Article 1, § 8, Clause 17 of the United States Constitution.

"The Congress shall have Power... To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by cession of particular States, and the Acceptance of Congress, become the seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings; --"

b. Other Methods of Acquiring Jurisdiction:

- 1). Federal reservation (often lands always held in Federal ownership);

- 2) State cession of land to the Federal government for post offices, military installations, prisons, etc. (particularly prior to 1940)
 - 3) Title 40 U.S.C. § 255 (U.S. Govt. must accept State's cession offer post -1940)
- c. Basic Constitutional Authority for Land Management Agencies: The Property Clause. In sum, the Property Clause of the Constitution provides that: *"The Congress shall have Power to dispose of and make all needful rules and Regulations respecting the Territory or other Property belonging to the United States...."* U. S. Const., art. IV, § 3, Cl. 2.
- d. Exclusive Jurisdiction: Exclusive jurisdiction exists where the Federal government has received, by whatever method, all the law enforcement authority of the State with no reservations made to the State. The Federal government conducts all law enforcement activities within these types of areas. State and local law enforcement have no jurisdiction to enforce laws in these areas. Examples areas of exclusive jurisdiction are Yellowstone National Park, and some Federal buildings and military installations.
- e. Concurrent Jurisdiction: Concurrent jurisdiction exists where a State has granted law enforcement authority to the United States while reserving to itself the right to exercise full law enforcement authority over the area concurrently. In areas of concurrent jurisdiction, both State and Federal Governments may conduct law enforcement activities and may prosecute for criminal violations in their respective court systems. Examples of areas of concurrent jurisdiction are Cape Canaveral National Sea Shore, Grand Canyon National Park, and some military installations.
- f. Proprietary Jurisdiction: Proprietary jurisdiction exists where the Federal government has acquired some right or title to lands but has not obtained any measure of the State's authority over the area. The Federal government may buy or lease the property, but generally has rights equivalent to a private landowner. However, under the Supremacy and Property Clause of the United States Constitution, Federal law enforcement officers may enforce laws of general application and Federal regulations enacted to protect these areas. Most Forest Service and BLM lands in the western United States are considered owned under proprietary jurisdiction. As public land in the West was withdrawn from

entry and private ownership to create the National Forests, Congress made it clear that the affected States would not lose jurisdiction over these properties. Title 16 U.S.C. § 480 states:

"The jurisdiction, both civil and criminal over persons within National Forests shall not be affected or changed by reason of their existence except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the state wherein any such National Forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction nor the inhabitants thereof, their rights and privileges as citizens or be absolved from their duties as citizens of the state."

4. Assimilative Crimes Act. The Assimilative Crimes Act (Title 18 U.S.C. § 13) comes from the word "assimilate", which means to take in and incorporate as one's own; to absorb. The first such law was passed in 1825. The present act was passed in 1948, and amended in 1994. It provides, in pertinent part, that:
 - a. *"Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in § 7 of this title [the statute defining "special maritime and territorial jurisdiction of the U.S."], or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."*
 - b. *"For purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law."*
 - c. *"Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States."*
5. Policy Behind the Statute. The policy behind this statute is to afford

those persons on Federal enclaves the same protection as citizens within the surrounding State, and allow State law to become Federal law when there is no Federal law available. The Assimilative Crimes Act allows acts to be prosecuted in Federal court which:

- a. Are a violation of State law,
 - b. Committed on property where the United States has either exclusive or concurrent jurisdiction and
 - c. There is no Federal law available to charge.
6. Assimilation is not available in areas of proprietary jurisdiction. Officers must first know if they are operating within an area of exclusive or concurrent jurisdiction in order to know if they can assimilate state laws.
 7. A Federal Crime Must Not Exist. The Assimilative Crimes Act *operates only when Federal law has not defined the criminal offense*. When a Federal statute or regulation exists prohibiting the conduct, officers cannot use the Assimilative Crimes Act to enlarge or narrow the scope of the crime.

F. EPO# 4: IDENTIFY THE ELEMENTS OF TITLE 18 U.S.C. § 111.

1. Every year, Federal law enforcement officers are assaulted in the line of duty. In order to deter offenders and punish them for using violence against federal officers and employees, Congress enacted 18 U.S.C. § 111 entitled, Assaulting, resisting, or impeding certain officers or employees.
2. By common law definition, an assault is any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm. A battery is intentional and wrongful non –consensual physical contact (touching) by a person (or an object controlled by that person) with another person. Most modern statutes and 18 U.S.C. § 111 use the term “assault” to include both the common law acts of assault and battery.
3. 18 U.S.C. §111 protects individuals designated in 18 U.S.C. §1114 from assault. Those designated in 18 U.S.C. §1114 for protection under 18 U.S.C. §111 include “any officer or employee of the United States or of any agency in any branch of the United States government (including any member of the uniformed services), or any person assisting such an officer or employee in the performance of such duties or on account of that assistance”
4. Specifically, 18 U.S.C. §111 reads as follows:

- a. “Whoever-- (1) *forcibly* assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in §1114 of this title while engaged in or on account of the performance of official duties; or (2) forcibly assaults or intimidates any person who formerly served as a person designated in §1114 on account of the performance of official duties during such person’s term of service, shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.”
 - b. “Enhanced penalty. Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.”
- 5. 18 U.S.C. §1114 reads as follows:
 - a. “Whoever kills or attempts to kill *any officer or employee of the United States, or of any agency in any branch of the United States Government (including any member of the uniformed services)* while such officer or employee is engaged in or on account of the performance of official duties, *or any person assisting such an officer or employee* in the performance of such duties or on account of that assistance, shall be punished . . .”
- 6. Of additional interest: Title 18, U.S.C. §115, “Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member.” This statute: (1) protects the families of public officials, judges, and law enforcement officers from retaliatory assault, kidnapping, or murder (including attempts) and (2) punishes threats to do so when the intent is to impede, intimidate or interfere with the Federal official’s duty.

7. "Forcibly" means by use of force.
- a. *Actual physical contact is not necessary.* Force need not actually have been used; it is sufficient if it was imminently threatened. United States v. Walker, 835 F.2d 983 (2d. Cir. 1987).
 - b. "Forcibly" as used in this section means the defendant forcibly assaulted *or* forcibly resisted *or* forcibly opposed *or* forcibly impeded *or* forcibly intimidated *or* forcibly interfered with the victim but the government need not prove that the defendant did all of those things. It is sufficient that he did any one of the acts charged. Long v. United States, 199 F.2d 717 (4th Cir. 1952).
 - c. Lifting of a menacing hand toward an officer, or shoving, or spitting in the officer's face, can be prosecuted under §111. Although some use of force is required, §111 does not require that the Federal officer be placed in fear or injured.
 - d. All threats of imminent physical harm and any use of physical force is sufficient to satisfy the element of assault. Many fact patterns satisfy this element, including interfering in a pursuit by federal officers, letting dogs loose to attack federal officers, and pointing an empty gun at officers.
 - e. Resistance:
 - 1). As a general rule, no person has a right to resist arrest. Even where the arrest is unlawful, the remedy is for the suspect to submit to the arrest and then file civil and/or criminal charges. Therefore, the unlawfulness of the arrest is not a defense. However, there is some case law suggesting that the use of minimal force to resist unlawful arrest does not violate the law. Realistically, the Department of Justice would not likely pursue a prosecution against an individual who used minimal resistance (like pushing or running away) to avoid an unlawful arrest.
8. Performance of Official Duties: While § 111 does not set forth what constitutes "official duties" and courts construing this language agree that "there is no bright-line test to define performance of official duties."

United States v. Hoy, 137 F.3d 726, 729 (2d Cir. 1998), quoting, United States v. Hoffer, 869 F.2d 123, 125 (1989).

- a. The courts in determining if a federal agent is engaged in the performance of his official duties examine whether the agent is acting within the scope of what he is employed to do or whether he was engaging in a personal frolic of his own. Hoffer, 869 F.2d at 126, quoting, United States v. Heliczer, 373 F.2d 241 (2d Cir. 1967), see also, United States v. Clemons, 32 F.3d 1504, 1507 (11th Cir. 1994); United States v. Cunningham, 509 F.2d 961 (U.S. App. D.C. 1975).
- b. Whether a federal officer wears a uniform, badge or other identifying credentials is not an essential component of the test, nor is location or work assignment. Defendants have faced criminal liability under § 111 when they assaulted:
 - (1) an off-duty park ranger enforcing park rules, United States v. Hohman, 825 F.2d 1363 (9th Cir. 1987);
 - (2) an off-duty DEA officer getting a haircut and overhearing a robbery in progress, United States v. Reid, 517 F.2d 953 (2d Cir. 1975);
 - (3) an IRS agent repossessing a car, United States v. Steich, 759 F.2d 579 (7th Cir. 1985);
 - (4) a federal judge walking to the federal courthouse on a Sunday evening to research a case, United States v. Boone, 738 F.2d 763 (6th Cir. 1984);
 - (5) a federal agent detaining a state-charged suspect, United States v. Lopez, 710 F.2d 1071 (5th Cir. 1983);
 - (6) an off-duty deputy U.S. Marshal arresting a suspect after coming upon a street fracas, United States v. Hoy, 137 F.3d 726 (2d Cir. 1998).
 - (7) An immigration officer who entered a bar to investigate report of three

unlawful immigrants was performance of official duties. Amaya v. United States, 247 F.2d 947 (9th Cir. 1957).

- (8) a U.S. Secret Service agent who, while en route to investigation of credit card fraud, was assaulted after she stopped to assist a person at scene of accident, since her actions were professional and appropriate, and indicia of her official capacity were evident. United States v. Kelley, 850 F.2d 212 (5th Cir. 1988).
- c. Each of these cases illustrates the fluidity of the term “while engaged” and refuses to define “official duties” either with a rigid time line or highly circumscribed activity. Additionally, Congress has made no attempt to circumscribe these holdings. Hoy, at 730.
- d. An agent need not be actually engaged in the performance of his duties to come under the protection of this section. Federal employees are also protected from retaliatory assaults initiated on account of the performance of official duties. For example: A DEA Agent was a guest at a wedding reception when he was singled out and brutally attacked solely because he was a DEA Agent. United States v. Velarde, 528 F.2d 387 (9th Cir. 1975). The assailant was convicted. United States v. Hohman, 825 F.2d 1363, 1365 (9th Cir. 1987) shows how a single assault can meet both variations of this element. Ranger Miller had finished his shift at Lake Mead NRA and changed into jogging shorts when he saw a loose dog on the beach. When he told the dog’s owner that this violated park rules, the owner (Hohman) punched him twice. Ranger Miller’s supervisor testified that he “was required to enforce park regulations 24 hours a day.” In the words of the court: “When Miller asked Hohman to comply with local regulations by removing the dog, he was ‘engaged’ in the performance of his duties. When Hohman struck Wilson, it was ‘on account of’ that performance.”

9. Protection under § 111 for those individuals who are not federal employees or officers but who are assaulted while assisting such officer or employee.
 - a. Courts have broadly interpreted the term “assisting such officer or employee” mentioned in § 1114.
 - b. In United States v. Murphy, 35 F.3d 143, 145 (4th Cir. 1994), the court held that a local jailor assisting the U.S. Marshal Service in the transfer of the defendant to another facility was afforded protection under §§ 111 and 1114. The court held that the common usage of the term “to assist” meant that the person was being used to help a federal agent, which was what happened in this case.
 - c. In State v. Chun, 347 F.2d 717, 721 (4th Cir. 1965) the court held that a state agent on loan to the IRS and assisting federal agents is a federal officer for purposes of § 111.
 - d. In United States v. Matthews, 106 F.3d 1092, 1093 (2d Cir. 1997) the court expanded the definition of “assisting” to protect a handyman employed by a private company to install wallboard in a hotel that had been seized by the federal government in a civil forfeiture proceeding. The defendant, a tenant in the hotel, pulled a knife on one of the workers who, he thought, was installing the wallboard incorrectly. The court affirmed the defendant’s conviction under § 111 holding that the handyman “assisting” the Marshal’s service based on the government’s seizure of the hotel.
10. Knowledge and Intent: The Supreme Court has found that when enacting 18 U.S.C. 111 Congress intended to protect both federal officers and federal functions and insure a federal forum for the trial of offenses involving federal officers. United States v. Feola, 420 U.S. 671, 679, 683-84 (1975).
 - a. All that section 111 requires is an intent to assault, not an intent to assault a Federal officer—even where the officer is an undercover agent and the assailant is not aware the officer is a Federal officer. United

States v. Feola, 420 U.S. 671 (1975).

- b. The assault must be willful. In other words the defendant acted voluntarily and intentionally, and not by mistake or accident.

11. Penalties. 18 U.S.C. § 111 has three penalty tiers.

- a. Simple assault, i.e., an attempt or threat to do bodily harm that does not involve an actual touching or a dangerous weapon is a misdemeanor punishable by one year.
- b. "All other cases" are felonies punishable by 8 years. These offenses involve contact but were not committed with a weapon and did not result in bodily injury.
- c. 18 U.S.C. § 111(b) creates an enhanced penalty when a "deadly or dangerous weapon" is used or "bodily injury" results. The penalty for this offense is 20 years. In defining a dangerous weapon, the statute specifically includes "a weapon intended to cause death or danger but which fails to do so by reason of a defective component." Almost any object which is used or attempted to be used in a way that can endanger life or inflict great bodily harm can be a dangerous weapon. United States v. Barber, 297 F. Supp. 917, 923 (D. Del. 1969) collected the following examples: "shoes on feet" can be a dangerous weapon, Medlin v. United States, 207 F.2d 33 (D.C. Cir. 1953), as well as a "wine bottle," Thornton v. United States, 268 F.2d 583 (D.C. Cir. 1959), a "rake," Eagleston v. United States, 172 F.2d 194 (9th Cir. 1949), a "chair," United States v. Johnson, 324 F.2d 264 (4th Cir. 1963), a "brick," State v. Perry, 226 N.C. 530, 39 S.E. 2d 460 (1946), or a "chair leg," Wisniewski v. State, 51 Del. 84, 138 A.2d 333, 341-342 (1957). Other examples include the teeth of an HIV-positive inmate, United States v. Moore, 669 F.Supp. 289 (D.C. Minn. 1987), a defective zip gun, United States v. Gometz, 879 F.2d 256 (7th Cir. 1989), a patrol car door kicked into the shins of an MP by a handcuffed suspect, United States v. Sherwin, 271 F.3d

1231 (10th Cir. 2001), and a walking stick, (United States v. Loman, 551 F.2d 164 (7th Cir. 1977)).

G. EPO#5: IDENTIFY THE ELEMENTS OF TITLE 18 U.S.C. § 201.

1. All citizens have a right to fair and ethical treatment by Federal employees. Additionally, federal employees and citizens must rely upon the honesty of those participating in official positions, such as judges, jurors and witnesses. The bribery statute, 18 U.S.C. § 201, is designed to punish corruption in the federal system.
2. To secure a conviction for bribery under 18 U.S.C. §201(b), the government must prove:
 - a. A corrupt offer or acceptance of something of value;
 - b. That such corrupt offer or acceptance was made to or by an officer of the United States, or person at the time acting for or on behalf of the United States in an official function; and
 - c. That the offer or acceptance was intended to influence the officer or person in the doing of some particular act or performance of some duty in the public official's official capacity.
3. Intent: "Bribery" under 18 U.S.C. §201 (b) requires proof of corrupt criminal intent. It is generally agreed that it involves a bad or evil purpose or motive.
4. EXAMPLES:
 - a. Defendant #1 offered Army Recruiter \$450 to keep Defendant #2 out of the service. Hurley v. United States, 192 F.2d 297 (4th Cir. 1951).
 - b. Defendant gave money to a chief narcotics investigator to release him and give narcotics back. Hone Wu v. United States, 60 F.2d 189 (7th Cir. 1932).
5. 18 U.S.C. §201(c) deals with the lesser included offense of giving or receiving a gratuity. Proof of conduct under these subsections differs from that of bribery. United States v. Hsieh Hui Mei Chen, 754 F.2d 817 (9th Cir. 1985).
 - a. Unlike bribery, there is no requirement of a "corrupt" offer or acceptance. Students may ask an instructor to clarify this difference between bribery and illegal gratuities. This

distinction in criminal intent between the two offenses generally turns on circumstantial evidence and is often obscure in particular cases; hence, the issue is often sent to the jury. One commentator [Strader, Understanding White Collar Crime, § 8.03 (2002)] summarizes the case law with these observations. First, while bribery must involve a contemplated quid pro quo nexus between the bribe and the official act, this need not be proven to establish an illegal gratuity. Second, bribery necessarily begins with a scheme to influence future official action, while gratuity can be paid illegally even after the official act was already completed entirely uninfluenced by the later payment of the gratuity.

- b. The government must merely establish that something of value was given to a public official for or because of an official act performed or to be performed.
 - c. Agency ethics officers can provide specific guidance regarding gratuities. Students should be advised that every agency has an office that can advise them about ethics rules including gratuities.
6. Other considerations in charging this offense:
- a. Both the person offering the bribe and the person who accepts it are culpable for the offense.
 - b. Title 18 U.S.C. §201(b)(2) is violated even though the official who is offered a bribe is not corrupted or the object of the bribe cannot be attained.
 - c. United States v. Arroyo, 581 F.2d 649 (7th Cir. 1978). In order for the crime of bribery to be committed, it is not necessary that the public official actually have the power to perform the act that he promises in return for money. The public official must only represent that the money will be for the purpose of influencing the performance of some official act.
 - d. The term "something of value" has been

broadly construed. In United States v. Gorman, 705 F.2d 1299, 1304-1305 (6th Cir. 1986), the term included a loan and a promise of a job. The court, after finding that the defendant could not have gotten the loan from a bank and that the offered job included a substantial raise, concluded that these items had value sufficient to sustain an illegal gratuity conviction.

7. The definition of public official:
- a. "The term 'public official' means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror."
 - b. Public official has been broadly construed by the courts to include persons selected to be public officials, and a number of other related persons. It is clear that state and local government employees who are administering federal programs qualify as public officials.
 - c. The term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed.
 - d. The statute also prohibits bribes or gratuities to persons who are former public officials (presumably because of any remaining official influence they might have).
 - e. The statute also prohibits bribes or gratuities to witnesses for their testimony.
 - f. The reach of federal prosecution into the activities of state and local officials administering federal funds was expanded by the Supreme Court in United States v. Dixon, 465 U.S. 482 (1984) and by Congress with the

passage of 18 U.S.C. § 666, "Theft or bribery concerning programs receiving federal funds."

II. FEDERAL FIREARMS VIOLATIONS

A. RAPPORT AND OPENING STATEMENT

1. All law enforcement officers face the possibility of encountering firearms on the job. This course provides a basic introduction to selected federal firearms laws. There are many federal firearms laws which this course does not address. Likewise, this course does not address agency-specific officer concerns, such as the ability to carry off-duty, the ability to carry personal weapons, etc.
2. Many states and municipalities have firearms laws which are more restrictive than federal law. Federal law enforcement officers should acquaint themselves with the firearms laws applicable in their jurisdiction.
3. During this course students will learn that machine guns, sawed-off weapons, and other extremely dangerous weapons can be legally possessed if strict legal requirements are met. However, officer safety is a paramount concern. The officer should always take steps to insure his safety and the safety of others before investigating to see if a weapon is legally possessed.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #6: Identify categories of individuals prohibited from possessing firearms.
- EPO #7: Identify procedures to initiate a firearms trace through the Bureau of Alcohol, Tobacco & Firearms.
- EPO #8: Identify the weapons listed in 18 U.S.C. §922(a)(4) which require registration with the Bureau of Alcohol, Tobacco & Firearms, and those weapons prohibited on a federal facility.

C. EPO #6: IDENTIFY CATEGORIES OF INDIVIDUALS PROHIBITED FROM POSSESSING FIREARMS.

1. A firearm is any weapon that will expel a projectile by explosive. This definition includes the frame or receiver of such weapon, a silencer or muffler, or any destructive device. 18 U.S.C. §921(a)(3). The definition does not include "antique" firearms (those manufactured prior to 1899), air-powered weapons like BB and pellet guns, black powder weapons and authentic replicas of antique firearms. 18 U.S.C. §921(a)(16).
2. Title 18 U.S.C. §922(g) prohibits certain individuals from knowingly [see 18 U.S.C. §924(a)(2)] "possessing in or affecting [interstate or foreign] commerce, any firearm or ammunition." Under 18 U.S.C. §922(g), it is unlawful for the following individuals to possess firearms.
 - a. anyone "who has been convicted in any court of a crime

punishable by imprisonment for a term exceeding one year.” This is referred to generically as a “convicted felon,” but does not include individuals convicted of:

- 1) a Federal or State offense pertaining to antitrust violations, unfair trade practices or similar offenses relating to the regulation of business practices, or
 - 2) “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.” See 18 U.S.C. § 921(a)(20).
 - 3) “Any court” includes federal convictions, state convictions, and courts-martial. Foreign convictions are NOT included. Small v. United States, 125 S. Ct. 1752 (2005). This resolves an earlier split among the circuits regarding the issue of whether “any court” included foreign courts. Thus, even a foreign conviction punishable by imprisonment for a term exceeding one year cannot serve as a predicate offense for 18 U.S.C. § 922(g)(1).
- b. a “fugitive from justice”
- 1) meaning “any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.” 18 U.S.C. § 921(a)(15)
- c. an unlawful user or addict of a controlled substance
- d. an individual who has been adjudicated a mental defective or who has been committed to a mental institution
- 1) Note that individual must have been “adjudicated” mentally defective or “committed” to an institution. Voluntarily seeking treatment does not make an individual prohibited.
 - 2) INSTRUCTOR NOTE: After the tragic events in April, 2007, at Virginia Tech [deranged student Cho kills 32 students and faculty and himself], Congress passed and the President signed into law the National Instant Criminal Background System [NICS] Improvement Amendments Act of 2007 (P.L. 110-180, Jan. 8, 2008) [See L-Drive - “1 Course Info – Basic Courses” “Federal Criminal Law” “Firearms”].

This law clarified (slightly) state (and federal) reporting requirements for this category and (more significantly) appropriated \$975,000,000 to states over the next 5 fiscal years to fund automated data collection and reporting systems to notify NICS of adjudicated mental defectives and those committed to a mental institution.

- e. an illegal alien or non-permanent resident alien, unless that alien has special permission to carry a firearm for hunting or sporting purposes or is authorized to carry a weapon as a foreign official. See 18 U.S.C. § 922(y)(2).
- f. an individual who has been dishonorably discharged from the Armed Forces
- g. anyone who has renounced his United States citizenship
- h. anyone subject to a court order restraining him from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner under these circumstances:
 - 1) there must have been a hearing for which the prohibited person received notice and a chance to participate;
 - 2) the restraining order must : (a) find the person a credible threat to physical safety of child or intimate partner, or (b) by its terms explicitly prohibit the use, attempted use, or threatened use of physical force against intimate partner or child that would be expected to cause injury,
- i. or, who has been convicted of a misdemeanor crime of domestic violence
 - 1) meaning a crime that “is a misdemeanor under Federal or State law” and “has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” 18 U.S.C. §921(a)(33)(A)

- a) this provision is particularly controversial, since some law enforcement officers lost their jobs when this provision was added in 1996.
 - 2) A person is not considered convicted of a disqualifying offense unless they had:
 - a) right to counsel, and
 - b) in a case in which they were entitled to a jury, the opportunity to have a jury or make a knowing and intelligent waiver of the right to jury. See 18 U.S.C. § 921(a)(33)(B).
- 3. A person who receives a complete pardon or expungement of a felony or misdemeanor crime of domestic violence conviction is no longer considered convicted. However, if the pardon or expungement is qualified by the condition that the person may not possess firearms, then he is still prohibited from possessing firearms under federal law. See 18 U.S.C. § 921(a)(20) and 18 U.S.C. § 921(a)(33)(B)(ii).
- 4. INSTRUCTOR NOTE: Additionally, 18 U.S.C. §922(n) prohibits a person indicted for a crime punishable by imprisonment for more than one year from receiving, transporting or shipping a firearm.

NOTE: During the break, many students enjoy inspecting and dry-firing the weapons in the Display Kit. This is an excellent way to encourage student interest in the subject. The Instructor should encourage this practice.

D. EPO #7: IDENTIFY PROCEDURES TO INITIATE A FIREARMS TRACE THROUGH THE BUREAU OF ALCOHOL, TOBACCO & FIREARMS

- 1. The primary reason to trace a firearm through the Bureau of Alcohol, Tobacco & Firearms (ATF) is to connect a firearm to a specific suspect. An ATF trace should reveal the manufacturer, the importer if the weapon is foreign made, the wholesale distributor, the weapon dealer, and the first retail purchaser from the dealer. While possible, it is unlikely that subsequent transactions (either legal or illegal) were reported to ATF. Since many weapons used in criminal activity have been stolen and repeatedly changed hands, an ATF trace may provide relatively little information. However, it may provide leads to sources of weapons. For example, an ATF trace would indicate if an individual was legally buying a large number of guns in a state where they are readily available and transporting them for sale to an area where they are not available. Example: a criminal buying many guns in Georgia and takes them to New York City to sell illegally for profit.) Likewise, an

individual possessing a stolen firearm might be linked to the theft of the firearm.

2. Gun manufacturers assign serial numbers to their firearms. The numbers themselves are not unique. It is quite possible that two different models of guns would have the same serial number. Therefore, the serial number alone is not enough to run a trace. In order to successfully run a trace, the ATF must be provided with the following:
 - a. Make
 - b. Model
 - c. Serial Number
 - d. Caliber or gauge
3. INSTRUCTOR NOTE: ATF started an internet-based tracing system in January 2005 called eTrace. Available to LEOs of participating agencies and departments, eTrace has reduced the average response time to 8 business days. The new system also supports generating statistical reports (e.g., average time-to-crime for firearms in a given location) and database queries to detect patterns and trends.

E. EPO #8: IDENTIFY THE WEAPONS LISTED IN TITLE 18 U.S.C. § 922(A)(4) WHICH REQUIRE REGISTRATION WITH THE BUREAU OF ALCOHOL, TOBACCO & FIREARMS AND THOSE WEAPONS PROHIBITED ON A FEDERAL FACILITY

1. Weapons requiring BATF registration. Certain weapons are not illegal per se, but must be registered with ATF for their possession to be legal. These include short-barrel shotguns, short-barrel rifles, machine guns, silencers/mufflers, and destructive devices.
 - a. A short-barrel shotgun is a shotgun having a barrel less than 18 inches in length or an overall length of less than 26 inches. 18 U.S.C. §921(a)(6).
 - b. A short-barrel rifle is a rifle having a barrel less than 16 inches in length or an overall length of less than 26 inches. 18 U.S.C. §921(a)(8).
 - c. A machine gun is any firearm that fires more than one bullet with a single trigger pull.
 - d. A silencer or muffler is any device used to silence or quiet the report of a firearm. 18 U.S.C. §921(a)(24). This is not limited to high-tech pieces of equipment, but could include common items such as oil filters, potatoes, and plastic 2-liter bottles filled with industrial foam.

- e. Destructive devices include bombs, grenades, rockets (with more than 4 oz. of propellant), missiles (with explosive charge more than one-quarter ounce), mines, or similar devices. The term also includes firearms with a bore greater than .50 caliber [except conventional shotguns]. 18 U.S.C. §921(a)(4).
2. If an officer sees a weapon which requires registration with ATF, the officer should always exercise safety precautions first and worry about checking the registration second. If any of these weapons are encountered on the street, it is extremely likely they are illegally possessed. While such weapons might be lawfully possessed in a home or business, it is still highly likely that the owner has not complied with the strict ATF requirements for possessing such weapons.
3. INSTRUCTOR NOTE: 26 U.S.C. § 5861 prohibits possession of such unregistered weapons. That statute also prohibits transferring, receiving and making such a weapon. 26 U.S.C. § 5871 notes that such crimes are punishable by 10 years of imprisonment, and 26 U.S.C. § 5872 dictates forfeiture of such weapons and either their destruction, retention for federal purposes or resale to state or local governments.
4. Weapons prohibited in a federal facility. A "Federal facility" is "a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties." 18 U.S.C. §930(g)(1).
5. It is unlawful to knowingly bring a "dangerous weapon" onto a "Federal facility". Dangerous weapons include: any "weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length." 18 U.S.C. §930(g)(2). This is a very wide range of weapons. Law enforcement officers working on Federal facilities should understand that nearly any item which is used as a weapon or personal self-defense device is prohibited.
6. State, local and Federal law enforcement officers are exempt from this law while in the performance of their duties. However, many Federal facilities still require law enforcement officers to check their weapons. Law enforcement officers have no absolute right to carry their weapons on Federal facilities, and if required, must check their weapons.

III. ENTRAPMENT/FALSE STATEMENTS

A. RAPPORT AND OPENING STATEMENT

1. The goal of a criminal investigator is a successful prosecution. The entrapment defense precludes the conviction of an individual if it was

the government who caused him to commit the crime.

2. The Federal defense of entrapment poses two questions: (1) did the government induce the accused to commit the offense; (2) if so was the accused ready and willing without persuasion to commit the offense. On the first question the accused has the burden; on the second the government has it. The defendant is entitled to a jury instruction on entrapment if there is sufficient evidence from which a reasonable jury could find entrapment. Mathews v. United States, 485 U.S. 58 (1988).
3. While performing their duties, Federal officers frequently encounter individuals who give them false information. An individual making such a false statement is usually violating 18 U.S.C. § 1001. This statute can be an effective tool to punish the makers of material false statements.

INSTRUCTOR NOTE: False Statements, EPO #11, is also taught in the MBPTP and LMTP programs in conjunction with Theft/Embezzlement, EPO #24.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #9: Recognize when an inducement by the government is permitted or prohibited.
- EPO #10: Recognize when predisposition negates an apparent entrapment defense.
- EPO #11: Identify the elements of Title 18 U.S.C. § 1001.

C. EPO #9: RECOGNIZE WHEN AN INDUCEMENT BY THE GOVERNMENT IS PERMITTED OR PROHIBITED.

1. What is meant by "Entrapment"?
 - a. Entrapment is the act of government officers or their agents (e.g., informants) inducing a person to commit a crime not contemplated by that person, for the purpose of prosecuting that individual.
 - b. It is the conception and planning of an offense by officers or their agents and their procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer/agent. United States v. Russell, 411 U.S. 423 (1973).
 - c. Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to

commit the criminal act, and then induce commission of the crime so that the government may prosecute. Sorrells v. United States, 287 U.S. 435 (1932).

2. The Entrapment Defense

- a. Entrapment is an “affirmative” defense. The defendant is entitled to an entrapment instruction whenever there is sufficient evidence from which a reasonable jury could find entrapment. The question of entrapment is one for the jury, rather than for the judge. Mathews v. United States, 485 U.S. 58 (1988).
- b. The Supreme Court has held that even if the defendant denies one or more elements of the charge he is still entitled to the entrapment instruction if there is sufficient evidence from which a reasonable jury could find entrapment. Mathews v. United States, 485 U.S. 58 (1988).
- c. Thus, a defendant can raise entrapment even if this is inconsistent with his other defenses. Mathews v. United States, 485 U.S. 58 (1988).

3. Views of Entrapment

- a. Objective view: the emphasis is on police conduct rather than the defendant’s state of mind.
- b. Subjective view: the critical factor in the entrapment equation is the state of mind of the defendant. At issue is the defendant’s predisposition to commit the offense charged. The question is whether the defendant, before contact with law enforcement officers or their agents, already possessed the state of mind to commit the offense charged. Once the defendant has raised the entrapment defense, the prosecution must negate it by establishing predisposition beyond a reasonable doubt. United States v. Navarro, 737 F.2d 625, 635 (7th Cir. 1984), cert. denied, 469 U.S. 1020 (1984). If defendant’s predisposition is established, she would not be entrapped. Sorrells v. United States, 287 U.S. 435 (1932). The court in Sorrells barely upheld the subjective view. Twenty-six years later the Supreme Court upheld the subjective view and criticized the objective view as being unduly restrictive upon the prosecution. Sherman v. United States, 356 U.S. 369 (1958). The Supreme Court established the subjective view as the correct one to be used in all Federal Courts. Hampton v. U.S., 425 U.S. 484 (1976). INSTRUCTOR NOTE: Sorrells and Sherman, were 5-4 decisions and Hampton was a 5-3 decision.

4. Due Process Argument (Objective Entrapment)
- a. Some lower courts have observed that government conduct can be so outrageous that due process principles would absolutely bar the Government from obtaining a conviction. United States v. Twigg, 588 F.2d 373 (3rd Cir. 1978); United States v. Cuervelo, 949 F.2d 559 (2d Cir. 1991) (sex with defendant can rise to outrageous government conduct); United States v. Russell, 459 F.2d 671 (9th Cir. 1972) (government supplies precursor drug not available to the public). In United States v. Chisum, 312 F.Supp. 1307 (C.D.Cal. 1970), the indictment was dismissed when the defendant was supplied counterfeit currency by a government agent and then indicted for receiving counterfeit currency with the intent to pass as genuine.
 - b. For example, threatening to injure the children of a target unless he committed a crime would cross this line and violate the Due Process Clause. Even if the target were predisposed to commit the crime, the Government's behavior would render the case non-prosecutable. If a prosecutor were foolish enough to proceed, the behavior would almost certainly lead to acquittal and a grave loss of public confidence in federal law enforcement. Obviously, such outrageous tactics are neither planned nor executed by professional federal law enforcement officers. But inadequately-controlled informants and other agents of the government can generate the grounds for this defense if their methods to develop cases become outrageously overzealous.
5. Inducement
- a. In general:
 - 1) There is a split of authority among the Circuits as to the amount of pressure that must be exerted by the government to form the basis for a properly supported entrapment instruction.
 - 2) Without some evidence of pressure exerted by the government, no instruction on the defense need be given.
 - b. The Second Circuit defines inducement as "soliciting, proposing, initiating, preaching, or suggesting the commission of the offense charged. United States v. Dunn, 779 F.2d 157, 158 (2d Cir. 1985) *quoting* United States v. Sherman, 200 F.2d 880, 883 (2d Cir. 1952) (L.Hand, J).

Inducement refers to “the government’s initiation of the crime and not to the degree of pressure exerted.” United States v. Riley, 363 F.2d 955, 958 (2d Cir. 1966).

- c. The First Circuit rejected this definition by distinguishing between solicitation and inducement. Mere solicitation would fail to meet the threshold criterion requiring the government to establish predisposition. Inducement requires evidence that shows the defendant was not ready to commit the crime charged. The Tenth Circuit also appears to require more than initiation or solicitation. At the far end of the spectrum, the Eleventh Circuit has held that the defendant must demonstrate not merely inducement or suggestion but an element of persuasion or mild coercion. United States v. Andrews, 765 F.2d 1491, 1499 (11th Cir.1985).
 - d. If there is sufficient evidence of inducement to warrant an instruction, then the government must establish that the defendant was predisposed to commit the offense charged beyond a reasonable doubt. The sole issue would be whether the government carried its burden of proving the defendant was predisposed to violate the law *before* the government intervened. Jacobson v. United States, 503 U.S. 540 (1992).
 - e. Inducement by law enforcement officers may take many forms including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based upon need, sympathy or friendship.
6. Permitted Inducements. Some inducements are unlikely to tempt a law-abiding person to commit a crime. Such inducements are so mild that courts generally condone their use. Some examples:
- a. Use of deception: United States v. Engler, 806 F.2d 425 (3d Cir. 1986).
 - b. Use of decoys (e.g., metal deer to catch poachers).
 - c. Payment of reasonable amount of money. Note that in the ABSCAM cases a \$50,000 bribe was held to be reasonable as was a proposed \$70,000 profit for Senator Williams.
 - d. Assistance in facilitating the commission of the crime by providing equipment or supplies (e.g., paper for counterfeiting) or products (e.g., chemical for drug manufacture).
7. “Prohibited” inducements. Some inducements are so coercive that their use jeopardizes any chance of successful prosecution. These may

create at least the appearance-- and sometimes the reality-- of outright duress. Threats against the well-being of the target's family in order to convince the target to agree to the proposed commission of a crime are one example. Other examples include:

- a. Extreme appeals to the sympathy or emotions of the person solicited. The Sherman case, taken to extremes, suggests an example.
- b. Offers of substantial, unreasonable amounts of money to an impoverished or financially desperate target. United States v. Dion, 762 F.2d 674 (8th Cir. 1985).
- c. Continual pressure on the target, such as repeated phone calls, visits, requests, etc.
- d. Repeated insistence, badgering or soliciting. Jacobson v. United States, 503 U.S. 540 (1992).
- e. Violent demonstrations, threats, and animal cruelty. United States v. Skarie, 971 F.2d 317 (9th Cir. 1992) (impaling live chicken).

8. Inducements by middlemen and informants:

- a. Private Inducement: Entrapment occurs only when the criminal conduct was the product of the activity of law enforcement officials. This means that entrapment cannot result from the inducements of a private citizen but must be the product of conduct by governmental agents.
- b. Inducements offered by Government Informers: On the other hand, when non-Government persons are recruited and then targeted against suspects by LEO, their activities will amount to Government inducement. In some cases, the private party is clearly an "agent" of the Government. Sometimes, however, the relationship between LEO and private parties is hazy. Whether the private party's activities constitute government inducement in such cases will depend on factors like:
 - 1) The extent of direction and supervision provided by LEO to the private party's actions.
 - 2) The degree to which targets are pre-selected by LEO.
 - 3) The history of similar prior operations by the private party and LEO.
 - 4) The extent to which operational resources are made available to the private party by LEO.
 - 5) The degree to which a successful operation results in

some tangible reward to the private party from LEO.

D. EPO #10: DETERMINE WHEN PREDISPOSITION NEGATES AN APPARENT ENTRAPMENT DEFENSE.

1. Predisposition in general:
 - a. Where a person already has a readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is not entrapment.
 - b. By predisposed, it is not meant that the defendant on his own, under some conceivable set of circumstances, might commit the crime, but that he is presently ready and willing to commit the crime. Predisposition is a state of mind that readily responds to the opportunity furnished by the officer or his agent to commit the forbidden act for which the accused is charged.
 - c. If there is evidence of inducement considered sufficient to warrant an instruction, then the government must establish that the defendant was predisposed to commit the offense charged beyond a reasonable doubt. The sole issue would be whether the government carried its burden of proving the defendant was predisposed to violate the law *before* the government intervened. Jacobson v. United States, 503 U.S. 540 (1992).
 - d. Use of other crimes evidence. Generally, evidence of earlier crimes or wrongdoing by the defendant is inadmissible in his criminal trial. Rule 404(a) F.R.E..
 - 1) But Rule 404(b) allows the use of evidence of "other crimes or acts "to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Courts have stated that the government may use such evidence to show predisposition.
 - e. Use of Prior Convictions / Prior Arrests / Prior Criminal Activity:
 - 1) The courts have permitted the use of prior criminal activity in order to prove the predisposition of the defendant to commit the charged offense.
 - 2) Proof of prior illegal conduct is relevant to the issue of a defendant's predisposition to commit a crime. The issue is whether the defendant's involvement in a prior criminal act is sufficiently similar to the act

charged in the indictment. If this requirement has been satisfied, then past acts leading up to the criminal activity are admissible to show knowledge, motive, and intent on the part of the defendant to participate in the crime charged.

f. Use of Post-Crime Criminal Activity:

- 1) Predisposition rests on a defendant's mental state prior to commission of the crime. But that mental state can be shown by what the defendant did or said either before or after commission of the crime charged. Thus, evidence of continued drug dealing by a defendant after his indictment for earlier drug deals was admissible to prove his predisposition once he contended that he had been entrapped. United States v. Moschiano, 695 F.2d 236, 243-244. (7th Cir. 1982).
- 2) A statement made by the defendant to an undercover agent that he would be willing to get more drugs for the agent ("if you need more I'll be here") was admissible to show his predisposition. United States v. Jenkins, 480 F.2d 1198, 1200 (5th Cir. 1973), cert. denied, 414 U.S. 913 (1973).
- 3) "The primary thrust of these authorities is that evidence of a similar offense, committed in close proximity of time, may be corroborative of a prior or subsequent offense. Although evidence introduced in a criminal trial generally should relate only to the specific offense charged, prior or subsequent incidents may be introduced to establish that a defendant possessed the requisite knowledge or that there is a consistent pattern, scheme of operations, or similarity of method." United States v. Rodriguez, 474 F.2d 587, 590 (5th Cir. 1973).
- 4) "The question in each case is not whether the events at issue occurred before, during or after commission of the alleged offense. The question is whether the events are relevant to and probative of the defendant's willingness to commit the crime charged when first solicited to do so by a government agent." United States v. Brown, 567 F.2d 119, 120 (D.C. Cir. 1977).

g. Use of Statements to establish predisposition:

- 1) Conversations with the defendant can be very important during an undercover investigation in proving his predisposition. Whenever possible, encourage the defendant to talk or brag about his criminal enterprise.
 - 2) In United States v. Hill, 626 F.2d 1301, 1302 (5th Cir. 1980), Hill boasted to the undercover agent "of his long-time involvement in procuring and selling stolen vehicles, of the quality of his wares, and the reliability of his operation, and of his past success in avoiding prosecution."
- h. Defendant's ready acceptance:
- 1) Courts have placed heavy emphasis on the defendant's ready acceptance of the offered inducement. In United States v. Reynoso-Ulloa, 548 F.2d 1329, 1336 (9th Cir. 1977) the court said "...while none of the factors alone indicates either the presence or absence of predisposition, the most important factor...is whether the defendant evidenced reluctance to engage in criminal activity which was overcome by repeated Government inducement."
 - 2) In other cases, the defendant's predisposition was proven by:
 - a) an "unbridled enthusiasm for his "new career". United States v. Anderton, 679 F.2d 1199, 1201 (5th Cir. 1982).
 - b) "I'm no Boy Scout." United States v. Myers, 692 F.2d 823, 836 (2d Cir. 1982) (one of the Abscam cases).
 - 3) A "ready response" reveals that the defendant was a willing participant and not one that had merely succumbed to the seduction of the LEO's inducement.

E. EPO #11: IDENTIFY WHEN A FALSE STATEMENT VIOLATES TITLE 18 U.S.C. § 1001.

1. The Statute. Title 18 U.S.C. § 1001 provides as follows:
 - a. Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- 1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- 2) makes any materially false, fictitious, or fraudulent statement or representation; or
- 3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than five years or, if the offense involves international or domestic terrorism, fined or imprisoned 8 years, or both.

- b. Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.
 - c. With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to...
 - 1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
 - 2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.
2. Elements of Title 18 U.S.C. § 1001. The following elements must be proven in order to establish that a violation of § 1001 has occurred:
- a. Whoever ...
 - b. Regarding certain Federal matters...
 - c. Knowingly and willfully...
 - d. Makes a false material statement, or makes or uses a false writing or document knowing it to contain a material false statement, or conceals or covers up a material fact...
- shall be fined/imprisoned up to five years.*
3. "Regarding Certain Federal Matters." False statements (oral or written), whether or not legally required to be made, which are made in a matter within the jurisdiction of the executive, legislative, or judicial branches of

the United States are violations of § 1001. United States v. Arcadipane, 41 F.3d 1 (1st Cir. 1994). Courts have also upheld convictions under this section where individuals have made false statements to state agencies that are recipients of Federal funds.

- a. The False Statements Accountability Act of 1996. Title 18 U.S.C. § 1001 applies to all three branches of the Federal government. In Hubbard v. United States, 514 U.S. 695 (1995), the Supreme Court had held that a Federal court was neither a “department,” nor an “agency,” within the meaning of § 1001. The Court also noted that these terms applied to Executive Branch agencies alone, as was originally intended. However, the 1996 Act overruled the Court’s interpretation in Hubbard, with the following limitations:
 - 1) That section (a) of the Act does not apply to a party or their counsel during a judicial proceeding for any statements, representations, writings or documents submitted by them to a judge or magistrate in that proceeding. Thus, non-parties could still be prosecuted for false statements made during a judicial proceeding, as could a party for false submissions made during administrative housekeeping matters, such as submissions to the Office of Probation, bar membership admissions or other judicial entities (the Clerk of the Court, for example).
 - 2) That section (a) of the Act shall apply to matters within the jurisdiction of the legislative branch only if they relate to administrative matters or congressional investigations conducted consistent with applicable congressional rules.
- b. Administrative matters would include such things as financial disclosure filings, claims to the House Finance Office, and submissions to other legislative entities, such as the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of the Inspector General of the House and the Capitol Police.
- c. Duly authorized investigations or reviews are those activities initiated through a formal action of a House or Senate committee, or the whole House or Senate. Inquiries by members of Congress or their staff would not be a duly authorized investigation under § 1001.
- d. Examples. The following examples are provided for

illustrative purposes.

- 1) United States v. Sheets, 65 F.3d 752 (8th Cir. 1995). Following an on-the-job dispute with fellow employee Quinn Hancock, Sheets filed a false amended tax return in Hancock's name. The amended return reported \$390,000 in unreported gambling revenue, which subjected Hancock to an additional tax liability of \$103,697.90. After Hancock eventually convinced the IRS that the claim was bogus, the IRS focused on Sheets. Sheets denied filing the amended tax return, furnished a disguised handwriting sample, and altered the typewriter he used to type the return before turning it over to the police. Sheets pled guilty to a two-count indictment for his false statements to the IRS.
- 2) United States v. Haggard, 41 F.3d 1320 (9th Cir. 1994). Several years after an 8-year-old girl was abducted near her home in Hayward, California, Haggard contacted the FBI and claimed to know of the location of her body and the identity of her assailant. Haggard was serving time in Indiana for burglary. During several interviews with the FBI, Haggard recounted his story, and the FBI declined to pursue the case. Upset, Haggard wrote to the *San Francisco Chronicle*, claiming to know the location of her body, her assailant's identity, and wanting to put the child's parents at ease and allow them to give the child a proper burial. The FBI called his bluff, and brought him to testify before a grand jury. The next day, Haggard led the FBI on a 4-hour, 100-mile wild goose chase around the Bay area. At the end of the trip, Haggard admitted he made the whole thing up, purportedly to seek favorable treatment with the Indiana Parole Board. As expected, when his hoax was revealed, the impact on the family of the missing girl was traumatic. After being indicted on 11 Federal counts, Haggard pleaded guilty to obstructing an FBI investigation, two counts of false statements to the FBI, obstructing justice by giving false testimony to a grand jury, and two counts of false statements to a grand jury. He received 78 months imprisonment, and a nominal fine and restitution.
- 3) United States v. Massey, 550 F.2d 300 (5th Cir. 1977). The defendant called the FBI on the telephone

and later met with an agent. Massey told the agent that he knew of a plot to kill President Ford and Senator Ted Kennedy. The information was unsworn, oral and unrecorded. The FBI commenced an investigation and later discovered that Massey had lied. He was convicted of violating § 1001.

- 4) United States v. Lambert, 501 F.2d 943 (5th Cir. 1974)(en banc), abrogated by United States v. Rodriguez-Rios, 14 F.3d 1040 (5th Cir. 1994)(en banc) as to “exculpatory no” doctrine. Lambert visited the Tampa FBI office and signed a written statement falsely stating that two Tampa Police Officers had arrested him without probable cause and had physically abused him. The FBI conducted an investigation and discovered the charge was an attempt to get back at the officers for his arrest. He was convicted of violating § 1001.
 - 5) United States v. Adler, 380 F.2d 917 (2d Cir. 1967), cert. denied, 389 U.S. 1006 (1967). The defendant, a contractor at a Navy submarine base, voluntarily visited the FBI and orally stated that government officials were bribing him. The FBI commenced an investigation and later discovered, and Adler admitted, that he had falsely incriminated the government officials because the officials were too tough on him. He was convicted of violating § 1001.
 - 6) United States v. Herring, 916 F.2d 1543 (11th Cir. 1990). The defendant falsely applied for and received unemployment benefits from Georgia. He claimed the federal government lacked jurisdiction to prosecute under § 1001. Georgia received federal dollars to help pay the administrative costs of its unemployment program and the program was overseen by the U.S. Secretary of Labor. Therefore, jurisdiction was appropriate and the defendant's conviction upheld.
4. Statements Regarding Criminal Acts. False statements made to a Federal agency by a “witness/informant” about alleged criminal acts are within the jurisdiction of the agency.
- a. United States v. Shanks, 608 F.2d 73 (2d Cir. 1979), cert. denied, 444 U.S. 1048 (1980). An employee (the eventual defendant) made deliberate false statements to investigators that briefly focused Secret Service attention on an innocent employee.

- b. Sica v. United States, 325 F.2d 831 (9th Cir. 1963), cert. denied, 376 U.S. 952 (1964). The IRS was investigating the tax liability of Cohen, who was involved in the cigarette vending machine business in the Los Angeles area. There was stiff competition between the vending machine companies. The IRS was able to prove that Cohen gave Sica \$5,000 in cash for his services in locating sites for the vending machines. The IRS interviewed Sica and informed him it was investigating Cohen. Sica denied in writing that he had ever accepted money from Cohen. Sica was later convicted of violating § 1001. Also, note the similarity between this violation by a witness and a violation of Title 18 U.S.C. § 4 (Misprision of Felony). The defendant gave a written false statement to the FBI intended to conceal her husband's participation in a bank robbery. United States v. Pittman, 527 F.2d 444 (4th Cir. 1975), cert. denied, 424 U.S. 923 (1976).
- 5. Statements Regarding Regulatory Functions. False statements made to an agency regarding the regulatory functions of a Federal department or agency.
 - a. United States v. Seay, 718 F.2d 1279 (4th Cir. 1983), cert. denied, 467 U.S. 1226 (1984). The defendant's husband died in 1950 while on active duty with the U.S. Army. She received benefits from the FECA (Federal Employees Compensation Act) for herself and four children. The defendant received forms stating that she would receive compensation as a widower until she died or remarried. In 1962, she moved in with Mr. Coke Seay and they lived together for 19 years. During that time, she changed her church membership and they both joined the same church as Mr. and Mrs. Coke Seay. They appeared in the church pictorial directory as "Mr. and Mrs. Coke Seay." The minister later testified at trial that the church members considered them to be married. Each year the Department of Labor sent the defendant a form, which she signed and failed to mention she was married. When the defendant discovered she was being investigated for making false statements, she moved out of Coke Seay's house and rejoined her old church. At trial the government was able to prove, that they were married under the common law and therefore she had lied on the forms sent to her by a Federal agency. She was convicted of violating § 1001.
 - b. United States v. Poindexter, 951 F.2d 369 (D.C. Cir. 1991). Poindexter was convicted on five felony counts based on the

part he played as National Security Advisor in the "Iran/Contra" affair. During his one year in that position, Poindexter made assurances that national policy was in accordance with the House Resolution concerning National Security Council assistance to the Contras, while the opposite was true. He also arranged for Oliver North to testify to those assurances and destroyed a Presidential "finding" that authorized the exchange of missiles to Iran in return for the release of hostages. He also falsely testified before the House Intelligence Committee concerning his knowledge of the missile shipments from Israel to Iran. The convictions were eventually overturned based on the immunity issues arising from his and Oliver North's testimony before the Congress United States v. North, 910 F.2d 843 (North I), *modified*, 920 F.2d 940 (D.C. Cir. 1990)(North II), cert. denied, 500 U.S. 941 (1991).

6. Knowingly and Willfully – Intent. To be a violation under § 1001, the statement must be one that is capable of affecting the exercise of a governmental function. The intent must be to deceive or to mislead and done knowingly and willfully. It is not required that the intent be to defraud. Examples include:
 - a. False certifications to GSA for nonconforming plastic bags. Company president ordered employees to short GSA, but did not personally sign certification statements. United States v. Fairchild, 990 F.2d 1139 (9th Cir. 1993), cert. denied, 510 U.S. 898 (1993).
 - b. False statements and documents sent to the IRS concerning a fraudulent land transaction were not spontaneous, emotional disclaimers, but were calculated and deliberately intended to influence the IRS; and if Duerr had not provided the information concerning the land transactions, the IRS would not have pursued the issue. United States v. Steele, 933 F.2d 1313 (6th Cir. 1991), cert. denied, 502 U.S. 909 (1991).
 - c. Accountant produced and gave to IRS auditor a charitable deduction he stated he had failed to file in previous tax year. Deduction was later proved false. United States v. Fern, 696 F.2d 1269 (11th Cir. 1983).
 - d. A defendant who deliberately avoids reading a form he is signing cannot avoid criminal prosecution for false statements contained on the form. By signing the form and not reading it the defendant acted with "reckless disregard of the truth," which has been held to satisfy the requirement of

§ 1001. United States v. Puente, 982 F.2d 156 (5th Cir. 1993).

7. Makes a False Material Statement or Conceals or Covers up a Material Fact. The false statement made by the defendant must be “material.” The materiality of a statement is a mixed question of law and fact, and is one that should be decided by the jury. As described by the Supreme Court:

“[T]he statement must have a natural tendency to *influence, or be capable of influencing, the decision of the decision-making body to which it was addressed*. The Constitution gives the criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged. The trial judge’s refusal to allow the jury to pass on the ‘materiality’ of Gaudin’s false statements infringed that right.” United States v. Gaudin, 515 U.S. 506 (1995).

- a. Oath or Affirmation. Under § 1001, a false statement is not required to be under oath or affirmation. See United States v. Poindexter, 951 F.2d 369 (D.C. Cir. 1991).
- b. Form of the Statement. The false statement can be oral or written.
 - 1) United States v. Moore, 27 F.3d 969 (4th Cir. 1994). Federal agents were investigating bank fraud by Moore and others. Moore was being interviewed by an FBI agent, a postal inspector, and two Assistant U.S. Attorneys where he denied his part in the preparation of false tax returns used by his client to obtain bank loans. Moore not only denied preparing the documents, but went on to say that he had not prepared any tax forms for the client, denied the handwriting on the form was his, but admitted the handwriting was similar to his. Moore then stated that he had never used the type of form that was being questioned.
 - 2) United States v. Barr, 963 F.2d 641 (3rd Cir. 1992). Barr served as an Assistant to the Attorney General in Washington, D.C. for nine months. On Barr’s SF-171 and SF-86, he answered “no” to questions concerning the use or possession of marijuana, narcotics, hallucinogenic, or other dangerous or illegal drugs. He was interviewed by the FBI as part of the security clearance procedure. After Barr resigned from his position, it was learned that Barr had used cocaine several times during the time period he had answered

“no” to use of drugs in the SF-171, SF-86, and the FBI interview. He had also used cocaine while employed with the Attorney General. Barr was convicted of false statements and drug possession.

- 3) United States v. Berisha, 925 F.2d 791 (5th Cir. 1991). Berisha was preparing to board an international flight from Dallas - Ft. Worth when a customs inspector approached him and asked him if he was carrying more than \$10,000. Berisha twice stated he only had \$8,000 with him. The inspector later observed Berisha attempt to pass a roll of currency to a companion. The total amount of currency possessed by Berisha was over \$17,000. He was convicted of failing to report the currency and false statements.

8. The “Exculpatory No.” At one time, some circuits held that false “exculpatory no” statements made by a suspect to agents in a criminal investigation were not a violation of § 1001. An “exculpatory no” statement is a statement in which the suspect merely denies that he is guilty of the crime in which he is a suspect. Even if the statement was untrue (i.e., he did in fact commit the criminal act), such a statement could not be charged under § 1001. The leading decision of the “exculpatory no” doctrine originated from the Fifth Circuit in Paternostro v. United States, 311 F.2d 298 (5th Cir. 1962), abrogated by United States v. Rodriguez-Rios, 14 F.3d 1040 (5th Cir. 1994)(en banc). Nevertheless, the United States Supreme Court put the “exculpatory no” issue to rest when it decided United States v. Brogan, 522 U.S. 398 (1998). In Brogan, the Court held that the plain language of § 1001 did not support any exception for an “exculpatory no” statement. The Court made it clear that, “[b]y its terms, § 1001 covers ‘any’ false statement...of whatever kind...including the use of the word ‘no’ in response to a question.” Justice Scalia emphasized that “...the Fifth Amendment does not confer a privilege to lie,” language that had been used by the Fifth Circuit in Rodriguez-Rios.

- a. False “exculpatory no” statements made regarding an administrative or regulatory investigation never fell within the exception to §1001. False statements made to Federal investigators that relate to Federal regulatory functions of a department or agency can form the basis for Federal prosecution under § 1001. See United States v. Barr, 963 F.2d 641 (3rd Cir. 1992)(false entries on SF-171 and SF-86 for employment), and United States v. Berisha, 925 F.2d 791 (5th Cir. 1991)(false entry on Customs currency reporting form).

- b. Congress addressed the “false exculpatory no” doctrine in the False Statements Accountability Act of 1996, by implicitly applying the doctrine in judicial proceedings where statements and other submissions to the court are made by the defendant or defendant’s counsel. The Department of Justice was concerned that adding any other proviso ending or extending the doctrine might delay the rest of the Act’s passage and invite new judicial interpretation.
- 9. Miscellaneous Statutes Related to § 1001:
 - a. Title 2 U.S.C. § 192 (Contempt of Congress).
 - b. Title 18 U.S.C. § 4 (Misprision of Felony).
 - c. Title 18 U.S.C. § 287 (False, Fictitious or Fraudulent Claims).
 - d. Title 18 U.S.C. § 1002 (Possession of False Papers to Defraud the United States).
 - e. Title 18 U.S.C. § 1005 (Bank Entries, Reports and Transactions).
 - f. Title 18 U.S.C. § 1015 (Naturalization, Citizenship, or Alien Registry).
 - g. Title 18 U.S.C. § 1505 (Obstruction of Proceedings Before Departments, Agencies, and Committees).
 - h. Title 18 U.S.C. § 1621 (Perjury).
 - i. Title 18 U.S.C. § 1622 (Subornation of Perjury).
 - j. Title 18 U.S.C. § 1623 (False Declarations Before Grand Jury or Court).
 - k. If the false statement violates § 1001 and another statute [e.g., Title 26 U.S.C. § 7207 (False Statements to an IRS Agent)], the prosecutor may choose § 1001, even if the penalties are more severe.

IV. CONSPIRACY / PARTIES

A. RAPPORT AND OPENING STATEMENT

1. There are various conspiracy statutes in the United States Code (U.S.C.), but this course covers only the general criminal conspiracy statute, codified at Title 18 U.S.C. § 371.
2. The Supreme Court has often referred to the crime of conspiracy as “a partnership in crime.” United States v. Socony-Vacuum Oil Co., Inc., 310 U.S. 510 (1940). As such, each conspirator, like a business partnership, is liable for virtually all acts and admissions of any co-conspirators.
3. The crime of conspiracy was created because of the inherent dangers posed to society when two or more individuals deliberately plot to violate the law. The Supreme Court has remarked on the dangers of a criminal conspiracy:

“It involves the deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered.” United States v. Rabinowich, 238 U.S. 78 (1915).
4. The general approach to conducting a conspiracy investigation is to identify the members within the organization along with their respective roles for achieving the criminal objectives. Criminals attempt to conceal their plans and avoid detection so recruiting and developing witnesses is critical to any conspiracy investigation. Investigators will need to locate and obtain evidence to corroborate witnesses and support the theory of the case that the defendants were acting together in agreement, toward a common criminal objective.
5. A person who commits a crime is called the “principal” of the offense. However, a crime may involve persons who assist the one who actually performed the criminal act. Additionally, the Federal statute pertaining to “Principals” (Title 18 U.S.C. § 2) contains a subsection concerning those who “cause” a crime to be committed. Still others may be involved in assisting the principal in some manner after the crime has been committed. These individuals are referred to as “accessories after the fact.” Finally, other individuals may have knowledge of a Federal crime, and commit an act that “conceals” the true nature of the crime. These individuals may be guilty of “misprision of felony.”
6. The General Federal Conspiracy Statute. Title 18 U.S.C. § 371 reads as follows:
 - a. “If two or more persons conspire either to commit any

offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

- b. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

7. The Importance of the Statute. Title 18 U.S.C. § 371 is a valuable tool for criminal investigators, and can often be used to great advantage. Nonetheless, many agents, investigators, and prosecutors do not take advantage of its ready availability.

- a. Pro-Active. Because the statute is pro-active in nature, criminals can be apprehended prior to any substantive criminal offense being committed (e.g., before the bank robbery attempt). United States v. Feola, 420 U.S. 671 (1975).
- b. Peripheral Helpers. Under the conspiracy statute, persons who could not be convicted as a principal under 18 U.S.C. § 2 (because a crime was never actually consummated) may still be caught in the web of a conspiracy.
- c. Insulated Leaders. In many criminal organizations, the leaders insulate themselves from those members whose actions are more visible, thus making them less likely to get caught. The law of conspiracy provides a method to reach beyond the visible layer and immobilize the entire organization.
- d. Doctrine of Merger. The conspiracy to commit a crime is a separate and distinct offense from the crime being planned and does not merge with any completed crime. Pinkerton v. United States, 328 U.S. 640 (1946). Accordingly, a defendant may be convicted and sentenced both for conspiracy to commit a crime and for the substantive crime itself. Even if the same act established the facts for both offenses, it is not double jeopardy.
- e. Inconsistent Verdicts. The law recognizes that inconsistent verdicts are often returned in criminal cases. The crime of conspiracy increases the chance that a defendant will be convicted of at least one charge. Thus, even when a defendant is acquitted of the substantive crime, he or she may still be convicted of the conspiracy charge. United

States v. Hughes Aircraft Co., 20 F.3d 974 (9th Cir.), cert. denied, 513 U.S. 987 (1994). Alternatively, an individual may be convicted of the substantive offense, but acquitted of the conspiracy charge. United States v. Stevens, 909 F.2d 431 (11th Cir. 1990).

8. The Elements of Conspiracy. The crime of conspiracy under Title 18 U.S.C. § 371 has five (5) elements.
 - a. Two or More Persons ...
 - b. Intentionally ...
 - c. Agree ...
 - d. To Violate Federal Law or Defraud the United States Government ... and
 - e. Commit An Overt Act In Furtherance Thereof.
9. Completion of the Conspiracy. When all of the above elements are present, the conspiracy is said to be COMPLETE. This does not mean that the conspiracy is finished, only that all the elements for a chargeable offense are now present.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #12: Identify how many persons are needed to form a conspiracy.
- EPO #13: Identify when knowledge and intent are sufficient to constitute a conspiracy.
- EPO #14: Recognize an agreement and its functions according to the provisions of Title 18 U.S.C. § 371.
- EPO #15: Recognize the function of an overt act in the crime of conspiracy.
- EPO #16: Identify when a co-conspirator's statement may be used during the prosecution of a conspiracy.
- EPO #17: Identify the limits of the withdrawer's or late joiner's criminal liability.
- EPO #18: Identify when a person may be prosecuted for assisting another in the commission of a crime, in accordance with Title 18 U.S.C. §§ 2-4.

C. EPO #12: IDENTIFY HOW MANY PERSONS ARE NEEDED TO FORM A CONSPIRACY

1. Two or More Persons. The plain language of Title 18 U.S.C. § 371 requires the participation of "two or more persons." The more difficult question to be answered is not how many persons are required for the

crime, but who can those persons be. When investigating a conspiracy case, it is particularly important to know who cannot be considered to be a conspirator to complete the two person requirement.

- a. Undercover Agents. Under § 371, an agreement between only two persons, one of whom is an undercover government agent, cannot support a conspiracy conviction, in that the requisite plurality is not present. United States v. Pennell, 737 F.2d 521 (6th Cir. 1984), cert. denied, 469 U.S. 1158 (1985).
- b. Confidential Informants. Informants working for the government are considered as an extension of the government, and, like undercover agents, cannot be counted as a person to satisfy the two-person requirement. An agreement between the defendant and at least one other non-government affiliated party must be proved.
- c. Partnerships. Unlike corporations, a partnership may not be named in the indictment as a conspirator, even where the conspiracy was intended to benefit the partnership. Nonetheless, the individual partners may be indicted for their participation in the conspiracy.

In addition, there are several categories of individuals who may or may not be considered as one of the necessary two or more persons.

- d. Mentally Ill Persons. Similar to undercover agents, if a mentally ill individual is not capable of forming the requisite intent to commit the crime, they may not be one of the required "two or more persons" necessary for a conspiracy conviction under § 371. United States v. Phillips, 630 F.2d 1138 (6th Cir. 1980).
- e. Minors. Minors may constitute one of the necessary "two or more persons." However, each case must be considered based on the circumstances present in each particular case, considering the age of the minor, their intellect, their education, etc.
- f. Landlords and Tenants. A landlord does not automatically become a co-conspirator simply because he or she has knowledge that a tenant is utilizing the property for criminal activities. Instead, it must be shown that the landlord was a party to the agreement. This can be done by showing that the landlord had a stake in the outcome of the conspiracy, above and beyond collecting the normal rent for the property. If this cannot be shown, the landlord may still be

guilty under Title 18 U.S.C. § 2 (Principals), discussed later in this lesson plan.

- g. Buyers and Sellers as Conspirators. A merchant need not abstain from engaging in his lawful business simply because his customer is engaged in an illegal activity. United States v. Falcone, 311 U.S. 205 (1940). Knowledge of the part of the seller is not enough, standing alone, to make him or her a conspirator. The seller must also have the necessary intent to assist the criminal venture. For example, where a merchant charges more for the merchandise purchased for use in the criminal activity, the additional profits show that the seller has a stake in the outcome of the illegal venture. Direct Sales Co. v. United States, 319 U.S. 703 (1943).

Also, be aware of the following categories in determining the two or more persons requirement.

- h. Husbands and Wives. While considered a single “person” at common law, the Supreme Court has taken a different view, recognizing that a husband and wife may conspire with one another. United States v. Dege, 364 U.S. 51 (1960).
- i. Employers and Employees as Co-Conspirators. If an employee is aware that his or her work-related duties are contributing to a criminal venture on the part of his employer, the employee may be held liable as a conspirator.
- j. Attorneys. An attorney may become a co-conspirator by providing advice to conspirators, if the attorney provides the advice before or during the commission of the conspiracy; the attorney has knowledge of the conspiracy; and the attorney intends to assist the conspiracy in attaining its ultimate objective(s).
- k. Corporations. A corporation may be indicted for the crime of conspiracy in certain instances. Specifically, where there are two “real” people, one of whom is authorized to act on behalf of the corporation (e.g., a chief executive officer), and the conspiracy is formulated to benefit the corporation, both the individual conspirators and the corporation may be indicted.
- l. Consistency of Convictions
 - 1) Traditional Rule. Traditionally, the “Rule of Consistency” provided that, if co-conspirators were tried in a single trial, a sole co-conspirator could not be found guilty of conspiracy under § 371, if all other co-conspirators were acquitted.

- 2) Recent Developments. Eight of the federal Courts of Appeal no longer follow the traditional rule, while a ninth has questioned its continued validity. Therefore, the conviction of a co-conspirator may be upheld, even if all other co-conspirators were acquitted of the conspiracy charge in the same trial.
- 3) Multiple Trials. The “Rule of Consistency” is inapplicable in cases where co-conspirators are tried in separate trials, based on the fact that different juries may hear different evidence.

D. EPO #13: IDENTIFY WHEN KNOWLEDGE AND INTENT ARE SUFFICIENT TO CONSTITUTE A CONSPIRACY

1. General Concepts. In a conspiracy prosecution, the government must prove that the defendant had knowledge of the conspiracy and intended to participate in it.
2. Knowledge. To be a co-conspirator, an individual must know of the conspiracy’s existence and its overall plan or purpose.
 - a. Knowledge Regarding Co-Conspirators. While the defendant in a conspiracy case must know at least one other person involved in the conspiracy, there is no requirement that the defendant know the identity, number, or role of all co-conspirators involved in the plan. Blumenthal v. United States, 332 U.S. 539 (1947).
 - b. Knowledge Regarding Details of the Plan. Secrecy and concealment are essential features of a successful conspiracy. Accordingly, there is no requirement that the defendant know all of the details of the conspiracy. Blumenthal, supra.
 - c. Reasonably Foreseeable Acts. The reasonably foreseeable acts of one co-conspirator, committed in furtherance of the overall plan of the conspiracy, are attributable to all other co-conspirators. Pinkerton, supra.
3. Intent. The government must show that the defendant intended to participate in the conspiracy. In most cases, a defendant’s intent must be inferred from the circumstances and proven through circumstantial evidence. In making this determination, courts will look at “the defendant’s relationship with other members of the conspiracy, the length of association between the members, the defendant’s attitude and conduct, and the nature of the conspiracy.” United States v. Collazo, 732 F.2d 1200 (4th Cir. 1984), cert. denied, 469 U.S. 1105 (1985).

**E. EPO #14: RECOGNIZE AN AGREEMENT AND ITS FUNCTIONS
ACCORDING TO THE PROVISIONS OF TITLE 18 U.S.C. § 371**

1. General Concepts. The essence of any conspiracy is the agreement itself. Two or more persons must agree to work together towards the accomplishment of a common goal. The government must prove the existence of an agreement in order to successfully prosecute conspirators under § 371.
2. Proving the Agreement. An agreement may be proven through circumstantial evidence. The agreement does not have to be put into words, either oral or written. United States v. Armstrong, 16 F.3d 289 (8th Cir. 1994). In fact, an agreement may be inferred from all of the facts and circumstances. Hamling v. United States, 418 U.S. 87 (1974).
3. Number of Conspiracies. To determine whether more than one conspiracy exists, the crucial factor is the number of agreements. United States v. Kearney, 560 F.2d 1358 (9th Cir. 1967), cert. denied, 434 U.S. 971 (1977). One agreement results in only one conspiracy, even though the agreement encompasses several unlawful acts. In determining the number of conspiracies in existence, courts will examine the nature of the scheme; the identity of the participants; the quality, duration, and frequency of each conspirator's transactions; and the commonality of time and goals. United States v. Cambindo-Valencia, 609 F.2d 603 (2d Cir. 1979), cert. denied, 446 U.S. 940 (1980).
4. Objects of the Agreement. In order to prosecute a defendant under § 371, either the object of the agreement or the means to accomplish the object must (1) be a crime against the United States or (2) tend to defraud the United States. The objective of the conspiracy does not have to be a crime. Hammerschmidt v. United States, 265 U.S. 182 (1924). It is sufficient to show that the contemplated objective would "impede, impair, defeat, or obstruct the proper functions of the United States Government."
 - a. Legal Objective/Illegal or Fraudulent Means. The objective of the conspiracy may be entirely legal, but the means of accomplishing it violate Federal law. For example, if the objective of the conspirators is to open their own restaurant, but they rob banks in order to obtain the funds, a conspiracy charge will lie.
 - b. Illegal or Fraudulent Objective/Legal Means. In this situation, the objective of the conspiracy is illegal (such as committing arson of a Federal building), but the means of accomplishing it are perfectly legal (such as buying matches and gasoline). Because the objective is a violation of

Federal law, a conspiracy charge can be brought.

- c. **Illegal or Fraudulent Objective and Means.** In this situation, both the objective and the means of accomplishing it are illegal, such as when individuals steal weapons to use in a bank robbery. In such a case, a conspiracy charge would be proper.
5. **Factual Impossibility.** Even though it may be factually impossible to accomplish the objective of the conspiracy, this is not a defense to a prosecution under § 371. United States v. Recio, 123 S.Ct. 819 (2003); United States v. Giry, 818 F.2d 120 (1st Cir.), cert. denied, 484 U.S. 855 (1987).

F. EPO #15: RECOGNIZE THE FUNCTION OF AN OVERT ACT IN THE CRIME OF CONSPIRACY

1. **General Concepts.** The final element that must be proven in any conspiracy prosecution under § 371 is that, following the agreement, one of the conspirators committed an overt act in furtherance of the agreement.
2. **Definition.** An “overt act” is any act by a conspirator that tends to assist in the accomplishment of the overall plan of the conspiracy.
3. **Purposes of the Overt Act.** The overt act serves three important purposes.
 - a. **Completes the Crime of Conspiracy.** Once an overt act is committed by one of the conspirators, the crime of conspiracy has been completed, irrespective of whether the ultimate goal of the conspiracy is ever committed.
 - b. **Withdrawal.** Since the crime of conspiracy is not actually complete until there has been an overt act, the overt act provides a demonstrable point in time before which an individual may withdraw from the agreement without incurring criminal liability under § 371.
 - c. **Proof of Intent.** The overt act demonstrates that the conspirators have moved from thinking about the crime to actually acting on their agreement. In other words, an overt act shows that the agreement is not dormant, but that it is actively being pursued by the conspirators. Yates v. United States, 354 U.S. 298 (1957).
4. **Number of Overt Acts Required.** Only one overt act must be committed to complete the conspiracy. A single overt act committed by one conspirator is sufficient to complete the conspiracy for all members, including those who join the conspiracy after it has begun. United

States v. Kissell & Harned, 218 U.S. 601 (1910).

5. Timing of the Overt Act. The overt act must occur after the agreement has been formed. An overt act performed prior to the agreement (sometimes termed a “preparatory act”) may not be used to complete the crime of conspiracy.
6. Nature of the Overt Act. The overt act need not be criminal in nature, but may, in fact, be entirely lawful. Braverman v. United States, 317 U.S. 49 (1942).

G. EPO #16: IDENTIFY WHEN A CO-CONSPIRATOR’S STATEMENT MAY BE USED DURING THE PROSECUTION OF A CONSPIRACY

1. General Concepts. Federal Rule of Evidence (Fed. R. Evid.) 801(d)(2)(E) provides, in pertinent part, that: “A statement is not hearsay if ... the statement is offered against a party and is ... a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy.” Bourjaily v. United States, 483 U.S. 171 (1987).
2. Applying the Rule. Under Fed. R. Evid. 801(d)(2)(E), everything said, done, or written by a conspirator during the existence of the conspiracy and in execution or furtherance of the conspiracy is admissible against all co-conspirators. When determining whether a co-conspirator’s statement is admissible under this rule, the following five (5) questions must be asked:
 - a. Was There a Conspiracy?
 - b. Was the Defendant a Member of the Conspiracy?
 - c. Was the Person Who Made the Statement a Member of the Conspiracy?
 - d. Was the Statement Made During the Conspiracy?
 - e. Was the Statement Made In Furtherance of the Conspiracy?
3. Analyzing the Responses. If the answer to each of the above questions is “yes,” then the statement is admissible under Fed. R. Evid. 801(d)(2)(E). However, if the answer to any of the above questions is “no,” then the statement is not admissible under this rule, although it may be admissible under another exception or exclusion to the hearsay rule. Bourjaily, supra.

H. EPO #17: IDENTIFY THE LIMITS OF THE WITHDRAWER’S OR LATE JOINER’S CRIMINAL LIABILITY

1. General Concepts. The law recognizes that someone may join or withdraw from a conspiracy after it has begun. Those who join the

conspiracy after it has begun are referred to as “late joiners,” while those who leave the conspiracy after it has begun are referred to as “withdrawers.”

2. Late Joiners

- a. Criminal Liability. “Late joiners” are criminally liable not only for conspiracy, but for any reasonably foreseeable crimes committed by his co-conspirators while the “late joiner” is a member of the conspiracy, to include the ultimate goal of the conspiracy if it is a criminal offense. However, “late joiners” are not criminally responsible for any acts of co-conspirators committed prior to their joining the conspiracy. Levine v. United States, 383 U.S. 265 (1966). Nonetheless, the prior acts of the co-conspirator’s are admissible at the trial of the “late joiner” in order to show that there was actually a conspiracy in existence for the “late joiner” to join. United States v. G.M.C., 121 F.3d 376 (7th Cir.), cert. denied, 314 U.S. 618 (1941).
- b. Effect on Conspiracy. The addition of a new conspirator does not create a new conspiracy.
- c. No Additional Overt Act Required. The addition of a new conspirator does not require that an additional overt act be performed after the “late joiner’s” addition.

3. Withdrawers. A commonly utilized defense to a conspiracy charge is withdrawal.

- a. Criminal Liability. A conspirator who withdraws from a conspiracy is liable for the crime of conspiracy, as well as any reasonably foreseeable crimes committed by his co-conspirators while he was a member of the conspiracy. Only by withdrawing from the agreement prior to the overt act can an individual entirely avoid liability for a conspiracy charge. Once a valid withdrawal occurs, however, the withdrawing conspirator will escape liability for any subsequent criminal acts of the remaining conspirators. United States v. Richardson, 939 F.2d 135 (4th Cir. 1991), cert. denied, 502 U.S. 1061 (1992).
- b. Requirements. There are two (2) requirements that must be met for a conspirator to validly withdraw from a conspiracy.
 - 1) Affirmative Act. The first requirement the defendant must prove to establish a valid withdrawal from a conspiracy is that he or she took some affirmative act(s) inconsistent with the goals of the conspiracy. Unless the defendant produces affirmative evidence

of withdrawal, his or her participation is presumed to continue. Hyde v. United States, 225 U.S. 347 (1912).

- 2) Communication. The affirmative act of withdrawal must be communicated in a manner reasonably calculated to reach at least one other co-conspirator or law enforcement. United States v. United States Gypsum Co., 438 U.S. 422 (1978).
- c. Mere Cessation of Activity. Withdrawal from a conspiracy requires more than simply cessation of participation in the conspiracy. United States v. Barsanti, 943 F.2d 428 (4th Cir. 1991), cert. denied, 503 U.S. 936 (1992).
- d. Burden. The burden of proving a valid withdrawal rests with the defendant.
- e. Effect on Conspiracy. The withdrawal of a single conspirator does not terminate the conspiracy or change the status of the remaining conspirators, unless the required “two or more persons” are no longer present (such as the withdrawal of a single conspirator from a two-person conspiracy).

I. EPO #18: IDENTIFY WHEN A PERSON MAY BE PROSECUTED FOR ASSISTING ANOTHER IN THE COMMISSION OF A CRIME, IN ACCORDANCE WITH TITLE 18 U.S.C. §§ 2-4.

1. Title 18 U.S.C. § 2(a). Title 18 U.S.C. § 2 is actually entitled “Principals.” Pursuant to this statute, individuals who provide assistance to a principal either before or during the commission of a crime may be held criminally liable as if they themselves had committed the offense. The statute is actually broken into two (2) subsections. The first part of the statute, subsection §2(a), deals with “aiding and abetting” a crime, and reads as follows:

“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.”

- a. Liability of Defendant. It is important to remember that, if an individual is found guilty of being an “aider and abettor,” he or she may be punished as if they had committed the crime themselves (i.e., as if they themselves were the principal of the offense).
- b. The Elements of Aiding and Abetting. There are three (3) elements necessary to prove a crime under subsection § 2(a).

- 1) Affirmative Act of Association. The statute requires that a defendant actually do something to assist in the commission of the crime.
 - a) Definition. An “affirmative act of association” has been defined as follows: “In order to aid and abet another to commit a crime, it is necessary that a defendant in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, and that he seek by his action to make it succeed.” United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938).
 - b) Timing. The affirmative act of association must occur either before or during the commission of the crime by the principal. If the act occurs after the commission of the crime, the defendant may be held liable as an “accessory after the fact,” discussed more below.
 - c) Mere Presence. The defendant is not required to be present at the time the crime is committed to be liable under § 2(a). Hume v. United States, 118 F. 689 (5th Cir. 1902), cert. denied, 189 U.S. 510 (1903). Further, mere presence at the scene of the crime, even in the presence of the principal, does not, standing alone, make an individual an aider and abettor. United States v. Williams, 341 U.S. 58 (1951).
- 2) Knowledge. In addition to an affirmative act of association, the defendant must also have knowledge that he or she is assisting in the commission of a crime.
 - a) Detail Required. There is no requirement that the defendant know all of the details of the crime. Williams v. United States, 308 F.2d 664 (9th Cir. 1962). However, where an individual unknowingly provides assistance to a principal, a prosecution under § 2(a) will not lie.
 - b) Willful Blindness. Deliberate avoidance of knowledge will not preclude a finding of knowledge. This occurs when a defendant asserts a lack of guilty knowledge, but the evidence supports an inference that he or she instead chose to intentionally avoid gaining

knowledge about the circumstances surrounding their assistance in order to avoid liability. United States v. Gruenberg, 989 F.2d 971 (8th Cir. 1993).

- 3) Commission of an Offense Against the United States. In order to prosecute an individual as a principal under 18 U.S.C. 2(a), a crime must actually be committed. United States v. Provenzano, 334 F.2d 678 (3d Cir.), cert. denied, 379 U.S. 497 (1964).
 - a) Conviction of Principal. A defendant may be convicted under § 2(a) even though the person who actually committed the crime is never convicted, caught, or even identified. United States v. Untiedt, 493 F.2d 1056 (8th Cir.), cert. denied, 419 U.S. 862 (1974).
 - b) Charging the Crime. When an individual is charged with aiding and abetting, the indictment need not specifically charge “aiding and abetting.” United States v. Armstrong, 909 F.2d 1238 (9th Cir.), cert. denied, 498 U.S. 870 (1990). Because those who aid and abet a crime are held liable as the principal of the crime, the indictment would charge the defendant with the completed offense (e.g., bank robbery).

2. Title 18 U.S.C. § 2(b). The second subsection of the statute, § 2(b), addresses those individuals who intentionally cause another person to commit an offense against the United States. This subsection reads as follows:

“Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal.”

- a. The Elements of “Causing.” There are three (3) elements necessary to prove a crime under subsection § 2(b).
 - 1) An Act. The defendant must cause another to perform some act that, if directly performed by the defendant or another, would be a crime. United States v. Kelley, 395 F.2d 727 (2d Cir.), cert. denied, 393 U.S. 963 (1968).
 - 2) Intentional. Further, the defendant must intentionally cause the other to perform the act.
 - 3) Offense Against the United States. Finally, the

defendant must cause the other to perform an act that is an offense against the United States.

b. Additional Concepts

- 1) Mere Presence. A prosecution under § 2(b) does not require that the defendant be present at the time the criminal act occurs.
- 2) Knowledge. Further, there is no requirement under § 2(b) that the defendant actually know the individual who commits the crime.
- 3) Conviction of Other Person. Finally, there is no requirement under § 2(b) that the person who actually committed the crime be convicted before the defendant can be convicted.
- 4) Charging. As with § 2(a), the defendant need not specifically be charged in the indictment with "causing" another to commit the crime, but only with the completed offense.

3. Title 18 U.S.C. § 3. Title 18 U.S.C. § 3 is directed at those individuals who provide assistance to the principal of a crime following the commission of the crime. The statute provides as follows:

"Whoever, knowing that an offense against the United States committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

- a. Liability of Defendant. Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or ... fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years."

b. The Elements of Accessory After the Fact. There are three (3) elements necessary to prove a crime under § 3.

- 1) Crime Must Be Committed. First, a crime must actually be committed before a defendant can be found guilty of violating 18 U.S.C. § 3. Whether the crime was a felony or misdemeanor is irrelevant.
- 2) Knowledge. Second, the defendant must have knowledge that a crime has been committed, although he or she need not know the precise nature of the

crime. United States v. Balano, 618 F.2d 624 (10th Cir. 1979), cert. denied, 449 U.S. 840 (1980).

- 3) Assistance to the Principal. Third, the defendant must willfully assist the principal so as to prevent or hinder the apprehension, trial or punishment of the principal.

c. Additional Concepts

- 1) Timing of the Assistance. A violation of § 3 can occur only after the crime has been committed. Government of the Virgin Islands v. Aquino, 378 F.2d 540 (3d Cir. 1967). A defendant who provides assistance to the principal before the crime or while the crime is in progress is guilty as an aider and abettor. United States v. Barlow, 470 F.2d 1245 (D.C. Cir. 1972).
- 2) Conviction of the Principal. As with aiding and abetting, the conviction of the principal is not required to convict the defendant of violating § 3. United States v. Walker, 415 F.2d 530 (9th Cir. 1969).
- 3) Silence as Assistance. An individual's silence may not be used to prove that the individual is an accessory after the fact. However, where an individual provides false or misleading statements to law enforcement officers, those statements may be used to prove the offense.

4. Title 18 U.S.C. § 4. Title 18 U.S.C. § 4 is directed at those individuals who have knowledge of a felony offense and take affirmative steps to conceal the crime and fail to disclose their knowledge to criminal investigators. As stated by one court, "misprision of felony" is the concealment of a felony without giving any degree of help to the individual who actually committed the crime." United States v. Perlstein, 126 F.2d 789 (3d Cir.), cert. denied, 316 U.S. 678 (1942). The statute reads as follows:

"Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both."

- a. The Elements of Misprision of Felony. There are four (4) elements necessary to prove a crime under § 4. Lancey v. United States, 356 F.2d 407 (9th Cir.), cert. denied, 385 U.S. 922 (1966).

- 1) Felony Committed. First, a felony must have been committed by the principal.
 - 2) Knowledge. Second, the defendant must have knowledge that the felony had been committed.
 - 3) Affirmative Act of Concealment. Third, the defendant must have performed either an affirmative act of concealment or an act that concealed the true nature of the crime.
 - 4) Failure to Disclose. Finally, the defendant must fail to disclose his knowledge of the crime as soon as possible.
 - a) Mere Failure to Report. A simple failure to report a crime does not, without an affirmative act of concealment, make one guilty of misprision of felony. However, where an individual lies to or misleads criminal investigators, this element may be met. United States v. Pittman, 527 F.2d 444 (4th Cir. 1975), cert. denied, 424 U.S. 923 (1976).
 - b) Self-Incrimination as a Defense. If the defendant is implicated in the crime committed by the principal, the right against compelled self-incrimination may provide a viable defense for a defendant accused of misprision of felony. Hoffman v. United States, 341 U.S. 479 (1951).
- b. Accessory After the Fact v. Misprision of Felony. There is a very close relationship between these two statutes. However, there are some differences that should be noted.
- 1) Maximum Punishment. The maximum possible punishments for both offenses are different.
 - 2) Felony Required. By statutory definition, misprision of felony can only occur when a felony crime has been committed by the principal. On the other hand, accessory after the fact may be charged regardless of the severity of the principal's offense.
 - 3) Assistance to Principal. A defendant accused of being an accessory after the fact must intentionally assist the principal of the offense, while one accused of misprision of felony need only commit an act of concealment without necessarily intending to assist the principal.

J. ADDITIONAL TEACHING POINTS FOR THE CRIME OF CONSPIRACY

1. **Introduction.** The following additional teaching points may be made by the instructor, should time permit. These points deal with the statute of limitations, and venue for a conspiracy charge and attempt to commit a crime. At the present time, these additional teaching points are not testable material.
2. **Statute of Limitations.** Pursuant to Title 18 U.S.C. § 3282, the statute of limitations for the crime of conspiracy is five (5) years.
 - a. **Running of the Statute.** The statute of limitations begins to run from the date the conspiracy is terminated, which could result from a variety of situations, such as consummation of the objective or abandonment. Typically, however, the statute of limitations begins to run from the date the last overt act was committed in furtherance of the conspiracy. Fiswick v. United States, 329 U.S. 211 (1946).
 - b. **Continuing Concealment of the Conspiracy.** An agreement among the conspirators to conceal a conspiracy after its goals have been accomplished may, depending on the nature of the agreement, extend the running of the statute of limitations on the conspiracy charge. Grunewald v. United States, 353 U.S. 391 (1957).
 - c. **Statute of Limitations on the Substantive Offense.** The statute of limitations for any substantive offense committed by the conspirators begins to run from the date the offense was committed.
3. **Venue.** The Sixth Amendment requires that prosecution occur “in the State and District wherein the crime shall have been committed.”
 - a. **Venue for the Conspiracy Charge.** Because the legal basis for a conspiracy charge is an agreement and an overt act in furtherance of that agreement, venue for a conspiracy charge can actually lie in two (2) separate locations.
 - 1) **Agreement.** Venue for the conspiracy charge will lie in the district where the agreement was entered into.
 - 2) **Overt Acts.** Venue for the conspiracy charge will also lie in any district in which any overt act in furtherance of the agreement was entered into. Further, since the overt act of one conspirator is considered to be the overt act of all, an overt act by one conspirator will establish venue for all conspirators in a single district, even in a district where the others were never physically present.

- b. Venue for Substantive Offenses. If a substantive offense is committed, venue for that offense will lie in the district where the crime actually occurred.
 - c. Title 18 U.S.C. § 3238. If the substantive offense is not committed within any state or district (e.g., the high seas), venue will lie in the district where the offender was arrested or into which he or she was first brought.
- 4. **Attempt.** Federal law provides no statutory definition of attempt to commit a crime. Precedent, however, establishes that to prove an attempt, the government must show a defendant's intent to commit the proscribed criminal conduct together with the commission of an act that constitutes a substantial step towards the commission of the proscribed criminal activity. United States v. Pennyman, 889 F.2d 104 (6th Cir. 1989). Thus the crime of attempt requires proof of specific intent to complete the acts constituting the substantive offense, regardless of whether the choate offense is a general or specific intent crime.
 - a. Impossibility. Factual impossibility, that is, the defendant is unable to accomplish what he intends because of some facts unknown to him, is not a defense to an attempt charge.
 - b. Abandonment/Withdrawal. The Model Penal Code recognizes abandonment as an affirmative defense to attempt under circumstances manifesting a complete and voluntary renunciation of criminal purpose. However, circuits addressing this issue have ruled that after a defendant has evidenced the necessary intent and has committed an act constituting a substantial step toward the commission of the offense, he has committed the crime of attempt, and can withdraw only from the commission of the substantive offense. See, e.g. United States v. Shelton, 30 F.3d 702 (6th Cir. 1994).

V. OBSTRUCTION OF JUSTICE

A. RAPPORT AND OPENING STATEMENT

1. The obstruction of justice statutes are designed to protect the integrity of the entire federal court system, whether the proceedings are administrative and pending before a Federal agency; legislative and pending before Congress; or judicial and pending as civil, or criminal proceedings before any level of the Federal judiciary.
2. When viewed and used together, these statutes provide a federal criminal investigator with powerful weapons against any person who seeks to corrupt ongoing investigations and court proceedings, as well as possible future investigations.
3. This course will examine four specific provisions of the United States Code that pertain to obstruction of justice in regard to criminal investigations and proceedings.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #19: Identify conduct that can be prosecuted under Title 18 U.S.C. §§ 1503 and 1510.
- EPO #20: Identify the groups of persons who are protected under Title 18 U.S.C. §§ 1512 and 1513.
- EPO #21: Identify conduct that constitutes "tampering" in violation of Title 18 U.S.C. § 1512 and conduct that constitutes "retaliation" in violation of Title 18 U.S.C. § 1513.

C. EPO #19: IDENTIFY CONDUCT THAT CAN BE PROSECUTED UNDER TITLE 18 U.S.C. §§ 1503 AND 1510

1. Title 18 U.S.C. §1503. This statute was enacted to ensure that court proceedings would take place in an atmosphere that would be conducive to seeking and finding the truth, without fear of intimidation, coercion, or corruption.
2. The Statute. Entitled "Influencing or Injuring Officer or Juror Generally," the statute provides as follows:
 - a. *"(a) Whoever, corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States*

magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due administration of justice, shall be punished as provided in subsection (b).

3. Title 18 U.S.C. § 1503 serves to protect the individuals involved in the federal court system and the integrity of the system itself.
 - a. Section 1503 can be broken down into two distinct parts. The first part of § 1503 covers obstruction of justice by those who would tamper with, or retaliate against jurors or officers of the court. Officers of the court include judges, prosecutors, and defense counsel. Law enforcement officers are not covered under § 1503 as officers of the court.
 - b. The second part of § 1503 contains an omnibus clause, or catch-all provision that prohibits any conduct that would obstruct the due administration of justice. The omnibus clause allows prosecutions for obstruction of justice even if the defendant's actions were not specifically prohibited in § 1503, or if these actions were against individuals other than jurors and officers of the court, witnesses, for example. See United States v. Simmons, 591 F2d. 206 (3d Cir. 1979). The defendant was charged with two counts of obstructing justice under the omnibus clause of § 1503. In one count he was charged after he destroyed documents that had been subpoenaed by the grand jury. In the second count he was charged after he instructed his employees to withhold information from the grand jury after they were subpoenaed to testify. The court

held that in both instances the defendant's conduct obstructed the due administration of justice because it affected the ability of the grand jury to carry out its function. U.S. v. Rovetuso, 768 F.2d 809, 824 (7th Cir. 1985). (Section 1503 is violated when a defendant interferes with the due administration of justice by tampering with a witness).

4. The Elements of the Statute.
 - a. For § 1503 Tampering:
 - 1). Whoever corruptly, or by threats, or force, or by any threatening letter, or communication,
 - 2). Endeavors to influence, intimidate, or impede,
 - 3). Any grand or petit juror, or officer in, or of , any court of the United States,
 - 4). In the discharge of his duty.
 - b. For § 1503 Retaliation (juror):
 - 1). Whoever injures,
 - 2). Any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him or on account of his being or having been such juror.
 - c. For § 1503 Retaliation (judge and officers of the court):
 - 1). Whoever injures,
 - 2). Any such officer, magistrate judge or other committing magistrate in his person or property on the account of the performance of his official duties.
 - d. For § 1503 (omnibus):
 - 1). Whoever, corruptly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes or endeavors to influence, obstruct, or impede,
 - 2). the due administration of justice.
5. Intent. The government must also prove that the defendant acted "corruptly," which is to say with an evil or wicked intent. United States v. Barfield, 999 F.2d 1520 (11th Cir. 1993). The action taken by the defendant must be with the intent to influence judicial or grand jury proceedings. United States v. Aguilar, 515 U.S. 593, 599 (1995)

(holding that uttering false statements to an investigating agent who might or might not testify before a grand jury is not sufficient for § 1503 liability). This is a “specific intent” crime, so if the intent cannot be shown, the crime cannot be charged. United States v. Bashaw, 982 F.2d 168 (6th Cir. 1992). To establish a violation of § 1503, the government must demonstrate that the defendant knew of the pending judicial proceeding and specifically intended to impede its administration. United States v. Guzzino, 810 F. 2d 687, 696 (7th Cir.).

6. Factual Impossibility. Whether the attempted obstruction of justice was successful is irrelevant for charging a violation of § 1503. The statute proscribes the endeavor to influence or obstruct the administration of justice; thus the impossibility of accomplishing the goal of the obstruction of justice does not prevent a prosecution for the endeavor to accomplish such a goal. United States v. Bucey, 876 F.2d 1297 (7th Cir. 1989). (Defendant, with knowledge of the ongoing grand jury investigation and of the subpoena issued to the witness, counseled the witness on how to role-play his grand jury testimony with his attorney, and instructed the witness to provide false and misleading testimony to the grand jury. The witness however, was an undercover government agent who never intended to testify in front of the grand jury). Osborn v. United States, 385 U.S. 323, 333 (1966) (Defendant employed an individual to contact a prospective juror and offer him a bribe. The individual was an informant for the government. Although the informant never intended to carry out the scheme to bribe the juror, that did not preclude the defendant’s conviction for endeavoring to bribe a juror.
7. Examples. The following cases show actions that constitute violations of § 1503.
 - a. Destroying documents sought by a grand jury. United States v. Ruggiero, 934 F.2d 440 (2d Cir. 1991).
 - b. Attempting to persuade a witness to falsely recant his trial testimony while the defendant’s case is on appeal. United States v. Moody, 977 F.2d 1425 (11th Cir. 1992).
 - c. Soliciting a third-party to approach the judge in the defendant’s case in an effort to influence the sentence to be imposed at the defendant’s upcoming sentencing. United States v. Glickman, 604 F.2d 625 (9th Cir. 1979).
 - d. Standing up during the testimony of a witness, shaking his fist, and saying “You better not!” constituted obstruction of the due administration of justice. United States v.

Harris, 558 F.2d 366 (7th Cir. 1977).

- e. Falsifying a report likely to be given to a grand jury. United States v. Mullins, 22 F.3d 1365 (6th Cir. 1994).
 - f. Endeavoring to suborn perjury. United States v. Kenny, 973 F.2d 339 (4th Cir. 1992).
 - g. Giving false denials of knowledge and memory or false and evasive testimony. United States v. Langella, 776 F.2d 1078 (2d Cir. 1985).
8. Title 18 U.S.C. § 1505. This statute was enacted to ensure that administrative and civil proceedings were as free from corruption, fraud, and threats as criminal proceedings. Thus, it covers proceedings before any agency, whether administrative or civil in nature, as well as any actions that are designed to impede any investigations that are being conducted by any agency or by Congress. (Although there is no EPO regarding § 1505 this is included for the instructors' information)
9. The Statute. Entitled "Obstruction of Proceedings Before Departments, Agencies, and Committees," the statute provides as follows:
- a. *"Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or*
 - b. *Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress -Shall be fined under this title or imprisoned not more than five years, or if the*

offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.”

10. The Elements of the Statute. In order to prove a violation of § 1505, the following three (3) elements must be shown. United States v. Price, 951 F.2d 1028 (9th Cir. 1991).
 - a. Pending Proceeding. First, there must be a “proceeding” pending before a department or agency of the United States.
 - b. Knowledge. Second, the defendant must be aware of the pending proceeding(s).
 - c. Intent. Third, the defendant must have intentionally endeavored to corruptly influence, obstruct or impede the pending proceeding(s).
11. Examples. The following cases show actions that constitute violations of § 1505.
 - a. Destroying documents after an administrative subpoena had been served on a corporation in the course of a Department of Energy audit. United States v. Sutton, 732 F.2d 1483 (10th Cir. 1984).
 - b. Submitting false reports by written and oral representations in a Department of Labor investigation. United States v. Sullivan, 618 F.2d 1290 (8th Cir. 1980).
 - c. Making false statements to a Department of Defense auditor. United States v. Leo, 941 F.2d 181 (3d Cir. 1991).
12. Title 18 U.S.C. § 1510. Prior to the enactment of § 1510 it was not a crime to obstruct a criminal investigation or inquiry before the initiation of proceedings within the scope of § 1503 or § 1505. This statute was enacted to close the loophole on the protection of witnesses and informants created as a result of the “pending proceeding” requirement of § 1503 and § 1505, and provide for the prosecution of those who would interfere with the criminal investigative process. When initially enacted § 1510 prohibited any actions taken to obstruct federal criminal investigations by bribery, intimidation, misrepresentation, force or threats of force, and for retaliation against informants. In 1982 upon enactment of 18 U.S.C. § 1512, section 1510 was amended. As amended § 1510 prohibits any actions taken to obstruct federal criminal investigations by bribery. (See United States v. King, 762 F.2d 232 (2d

Cir. 1985)). Section 1510 is aimed at those who try to buy the silence of an actual or potential witness through bribery. The statute also creates additional criminal liability when an officer of a financial institution "tips off" a customer or any other person about either the existence or the contents of a grand jury subpoena for financial information. However, that portion of the statute is beyond the purview of this course.

13. The Statute. Entitled "Obstruction of Criminal Investigations," the statute provides, in pertinent part, as follows:
 - a. *"(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both."*
14. The Elements of the Statute. To prove a violation of § 1510, the government must establish the following elements.
 - a. Willfulness. First, the government must show that the defendant intentionally tried to obstruct, delay, or prevent another person from communicating information to a criminal investigator.
 - b. Bribery. Second, the government must show that the attempt to silence the witness was by means of bribery (offering something of value to the witness).
 - c. Criminal Statute. Finally, the information that the defendant is trying to stop from reaching criminal investigators must relate to a violation of a criminal statute of the United States.
15. Knowledge Required. The government must show that the defendant had actual knowledge that the intended recipient of the information was a federal criminal investigator. United States v. Lippman, 492 F2d 314 (6th Cir. 1974). However, the defendant need not actually know that the information has been or is about to be supplied to a federal criminal investigator. It is required only that the defendant believed that information might be supplied to a federal criminal investigator.
16. Victim's Intent. The government is not required to show that the victim actually intended to give information to a federal criminal investigator or that the defendant knew the contents of the information. Further, it is not necessary to prove that the victim felt threatened (i.e., the victim

could be a willing participant in the obstruction).

17. Investigation Not Required to be Ongoing. To successfully prosecute a defendant for violating § 1510, there is no requirement that an investigation be underway or ongoing. Actions taken prior to the commencement of a formal investigation come within the statute if the prosecution proves that the defendant knew or reasonably believed that the person sought to be influenced had relevant information and was likely to share it with law enforcement officers.

D. EPO #20: IDENTIFY THE GROUPS OF PERSONS WHO ARE PROTECTED UNDER TITLE 18 U.S.C., §§ 1512 AND 1513

1. Title 18 U.S.C. §1512. Congress passed the Victim Witness Protection Act in 1982 which created § 1512 and § 1513. Section 1512 was enacted to protect various classes of individuals before they testify or communicate information to a law enforcement officer. It prohibits conduct that is intended to drastically impact and subvert the lawful presentation of evidence in federal proceedings or the communication of information to a federal law enforcement officer or federal judge. It is important to note that this statute covers both "violent" tampering, as well as more subtle forms of tampering, such as deliberately using false and misleading statements to cause a witness to either fail to appear or to destroy or alter evidence.
2. § 1512. Tampering with a witness, victim, or an informant
 - (a) (1) Whoever kills or attempts to kill another person, with intent to--
 - (A) prevent the attendance or testimony of any person in an official proceeding;
 - (B) prevent the production of a record, document, or other object, in an official proceeding; or
 - (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;shall be punished as provided in paragraph (3).
 - (2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to--
 - (A) influence, delay, or prevent the testimony of any person in an official proceeding;
 - (B) cause or induce any person to--
 - (i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (ii) alter, destroy, mutilate, or conceal an object with intent to

impair the integrity or availability of the object for use in an official proceeding;

... (iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

... (iv) be absent from an official proceeding to which that person has been summoned by legal process; or

... (C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

... (3) The punishment for an offense under this subsection is--

... (A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

... (B) in the case of--

... (i) an attempt to murder; or

... (ii) the use or attempted use of physical force against any person; imprisonment for not more than 20 years; and

... (C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

... (b) Whoever knowingly uses intimidation, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--

... (1) influence, delay or prevent the testimony of any person in an official proceeding;

... (2) cause or induce any person to--

... (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

... (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

... (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

... (D) be absent from an official proceeding to which such person has been summoned by legal process; or

... (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from--

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section--

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance--

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate [United States magistrate judge], a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

3. Section 1512 encompasses four distinct offenses.
 - a. Killing or attempting to kill a victim, witness, or informant;
 - b. Intimidating, threatening, or misleading a witness, victim, or informant; and
 - c. Harassing a witness, victim, or informant.
 - d. Destroying or concealing documents to impair their integrity or availability in a proceeding.
4. The Elements of the Statute. The following elements must be proven to convict a defendant of violating §1512.
 - a. Killing or Attempting to Kill a Victim, Witness or Informant
 - 1) That the defendant killed, attempted to kill, or used physical force against a witness, victim or informant, **with the intent to:**
 - 2) Prevent their attendance or testimony in an official proceeding, **or**
 - 3) Prevent the production of documents, or other objects in an official proceeding, **or**
 - 4) Prevent the communication of a federal criminal violation to a federal law enforcement officer or judge.
 - b. Intimidating, Threatening or Misleading a Witness, Victim or Informant
 - 1) That the defendant **knowingly** used intimidation, threats, or engaged in misleading conduct toward

another person **with the intent to:**

- 2) Prevent their attendance or testimony in an official proceeding, **or**
- 3) Prevent the production of documents or other objects in an official proceeding, **or**
- 4) Prevent the communication of a federal criminal violation to a federal law enforcement officer or judge.

c. Harassing a Witness, Victim or Informant

- 1) That the defendant **intentionally** harassed a witness, victim or informant which resulted in:
- 2) Hindering, delaying, preventing, or dissuading the person from:
- 3) Attending or testifying in an official proceeding, **or**
- 4) Reporting to a law enforcement officer or judge of the United States a violation of federal law.

d. Destruction, Mutilation or Concealment of Documents or Objects

- 1) That the defendant **corruptly** altered, destroyed, mutilated, or concealed a record, document or other object **with the intent to:**
- 2) Impair the object's integrity or availability for use in an official proceeding

5. Who is Protected? The following persons are protected by the provisions of §1512.

- a. Victims;
- b. Witnesses; and
- c. Informants

6. Timing of the Offense. This statute covers actions by a defendant that take place before an individual testifies or provides information to the government.

7. Extraterritorial Jurisdiction. There is extraterritorial federal jurisdiction over an offense under §1512. Thus, the acts which constitute a basis for the charge do not have to occur within the jurisdiction of the United States.

8. Title 18 U.S.C. §1513. This statute protects witnesses, victims, and informants after they have testified or reported information to a criminal

investigator or law enforcement officer. Under §1513, two types of conduct are addressed. First, the statute addresses threats of retaliation; second, the statute addresses attempts at retaliation.

9. The Statute. Entitled "Retaliating Against a Witness, Victim, or an Informant," the statute provides as follows.

§ 1513. Retaliating against a witness, victim, or an informant

(a) (1) Whoever kills or attempts to kill another person with intent to retaliate against any person for--

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is--

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 20 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for--

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this

section.

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

[(f)](e) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

10. Section 1513 encompasses three distinct offenses when retaliatory action is taken against a victim, witness or informant on account of their involvement in a federal investigation or proceeding.
 - a. Killing or attempting to kill a witness, victim or informant
 - b. Causing bodily injury to a witness, victim or informant, or damage to their property,
 - c. Taking any harmful action against a witness, victim or informant.
11. The Elements of the Statute. The following elements must be proven to convict a defendant of violating §1513.
 - a. Killing or Attempting to Kill a witness, victim or informant.
 - 1) That the defendant killed or attempted to kill a witness, victim or informant with the ***intent to retaliate*** against them for:
 - 2) Their attendance or testimony in an official federal proceeding, ***or***
 - 3) The production of a document or other object in a federal proceeding, ***or***
 - 4) The communication of a federal violation to a federal law enforcement officer.
 - b. Causing bodily injury to a witness, victim or informant or damage to their property.
 - 1) That the defendant ***knowingly*** engaged in any conduct which
 - 2) Caused bodily injury to another person or their property, or threatened to do so with ***the intent to***

retaliate against them for:

- 3) Their attendance or testimony in an official federal proceeding, ***or***
 - 4) The production of a document or other object in a federal proceeding, ***or***
 - 5) The communication of a federal violation to a federal law enforcement officer.
- c. Taking any harmful action against a witness, victim or informant.
- 1) That the defendant knowingly, with the intent to retaliate
 - 2) Took any harmful action, including interference with the lawful employment or livelihood of any person,
 - 3) For providing to a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense.

12. In order to prove a violation of any provision of § 1513, the government must prove the following elements.
 - a. An Act. First, the government must prove that the defendant retaliated against, attempted to retaliate against, or threatened to retaliate against, an individual who had testified or reported information to a criminal investigator.
 - b. Intent. Second, the government must prove that the defendant acted with the specific intent to retaliate against the individual for his or her testimony or reporting.
 - c. Knowledge. Third, the government must prove that the defendant intentionally took action against the individual with the knowledge that the victim or another person had been a party to or a witness in a federal proceeding or had reported information to a federal law enforcement officer.
13. Extraterritorial Jurisdiction. Again, there is extraterritorial federal jurisdiction over an offense under section 1513.

E. EPO #21: IDENTIFY CONDUCT THAT CONSTITUTES “TAMPERING” IN VIOLATION OF TITLE 18 U.S.C. § 1512 AND CONDUCT THAT CONSTITUTES “RETALIATION” IN VIOLATION OF TITLE 18 U.S.C. § 1513

1. The following acts constitute “tampering” in violation of 18 U.S.C. § 1512.
 - a. Killing or attempting to kill a person to prevent testimony or production of documents or information. United States v. Galvan, 949 F.2d 777 (5th Cir. 1991).
 - b. Using intimidation tactics, although the witness does not have to be intimidated in fact. United States v. Johnson, 903 F.2d 1084 (7th Cir. 1990).
 - c. Using physical force against a witness or informant. United States v. Scaife, 749 F.2d 338 (6th Cir. 1984).
 - d. Threatening the use of physical force. United States v. Dunning, 929 F.2d 579 (10th Cir. 1991).
 - e. Corruptly persuading a person not to testify. United States v. Aguilar, 21 F.3d 1475 (9th Cir. 1994).
2. The following demonstrates “retaliation” in violation of 18 U.S.C. § 1513.
 - a. Actions that do not rise to the level of attempt may be successfully prosecuted as “endeavors” under this statute, if the goal was to cause injury. United States v. Garcia-Pupo, 845 F.2d 8 (1st Cir. 1988).
 - b. Threats to retaliate are enough to prosecute under this statute when it can be proven that the defendant acted with the specific intent to obstruct a federal investigation or proceeding. United States v. Brown, 937 F.2d 32 (2d Cir. 1991).
 - c. The fact that a threat is never carried out does not act as a defense to a charge of violating § 1513. United States v. Maggitt, 784 F.2d 590 (5th Cir. 1986).

F. § 1503 OMNIBUS CLAUSE AND § 1512

1. With the passage of the Victim and Witness Protection Act in 1982 it was possible for a person to be charged with witness tampering under § 1512 or under § 1503 (Omnibus Clause). An issue for the courts to decide was whether § 1512 was the exclusive statute for charging witness tampering, or could a person be charged with witness tampering under the Omnibus Clause of §1503.
2. A majority of circuits have rejected the idea that § 1512 is the exclusive statute for charging witness tampering, and that § 1503 (Omnibus Clause) may be used if desired by the government. Keep in mind that the pending proceeding requirement must be met in prosecution under § 1503 (Omnibus Clause).
3. Cases that have held that § 1512 is not the exclusive statute for charging witness tampering:
 - a. United States v. Kenny, 973 F.2d 339 (4th Cir. 1992)
 - b. United States v. Branch, 850 F.2d 1080 (5th Cir. 1988)
 - c. United States v. Wesley, 748 F. 2d 962 (5th Cir. 1984)
 - d. United States v. Tackett, 113 F.3d 603 (6th Cir. 1997)
 - e. United States v. Maloney, 71 F.3d 645 (7th Cir. 1995)
 - f. United States v. Rovetuso, 768 F.2d 809 (7th Cir. 1985)
 - g. United States v. Risken, 788 F.2d 1361 (8th Cir. 1986)
 - h. United States v. Ladum, 141 F.3d 1328 (9th Cir. 1998)
 - i. United States v. Moody, 977 F.2d 1420 (11th Cir. 1992)
4. Cases that have held that § 1512 is the exclusive statute for charging witness tampering:
 - a. United States v. Masterpol, 940 F.2d 760 (2d Cir. 1991)
 - b. United States v. Hernandez, 730 F.3d 895 (2d

Cir. 1984)

VI. FEDERAL FRAUD STATUTES

A. RAPPORT AND OPENING STATEMENT

1. Title 18 U.S.C. §1341, Mail Fraud, Title 18 U.S.C. §1343, Wire Fraud, and Title 18 U.S.C. § 2314, Interstate Transport of Stolen Property (or the National Stolen Property Act) are three of the most important statutes utilized by Federal criminal investigators to combat the full gamut of frauds, schemes and swindles that know no state boundaries. In fact, crimes which would otherwise be purely state or local offenses can gain Federal stature by the simple act of using the United States mails, an interstate commercial carrier, the interstate communications system, or any other facility of interstate commerce.
2. Title 18 U.S.C. §1341 is based on Article I, section 8 of the United States Constitution, which vests authority in the Federal government over "post offices and post roads". By 1872, when the statute was enacted, the United States mails had become the easiest and least expensive means for communicating throughout the country and its territories. Unfortunately, the unscrupulous were quick to capitalize on this new convenience as a mechanism for committing frauds. The advantages of using the mails to commit schemes, frauds and swindles were many: fewer face-to-face transactions, making identification and prosecution more difficult; the availability of rented post office boxes, which allowed those so inclined to operate under a false name in a town where they did not reside; the limited resources of state and local law enforcement authorities, which made investigations of crimes originating in other states difficult to investigate; and the absence of laws that made conduct spanning more than one state illegal. Congress closed that door with the enactment of this statute in 1872.
3. More recently, with the advent of the telegraph, telephone, radio, television and the Internet, as well as improved means to travel in interstate and foreign commerce, creative criminals have devised means of defrauding victims by relying on these various interstate communications facilities and travel means. Schemes have ranged from the religious, such as that perpetrated by Jim and Tammy Faye Bakker, to the "boiler room" scams which target older people and obtain money via telephone using various bullying techniques. New schemes are arising on a daily basis on the Internet. In addition, con artists lure their victims over state lines and from overseas to mislead them face-to-face. As a result, these three statutes remain a vital part of the Federal investigator's arsenal against crime.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

- EPO #22: Identify the elements of the Mail Fraud statute, Title 18 U.S.C. § 1341, and the Wire Fraud statute, Title 18 U.S.C. § 1343.
- EPO #23: Identify the elements of the National Stolen Property Act, Title 18 U.S.C. § 2314.

C. EPO #22: IDENTIFY THE ELEMENTS OF THE MAIL FRAUD STATUTE, TITLE 18 U.S.C. § 1341, AND THE WIRE FRAUD STATUTE, TITLE 18 U.S.C. § 1343.

1. Title 18 U.S.C. §1341. Titled “Frauds and Swindles”, but commonly referred to as the “Mail Fraud Statute”, this statute provides as follows:
 - a. *“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”*
2. Elements of Title 18 U.S.C. §1341. Title 18 U.S.C. §1341 is designed to criminalize the use of the mails to facilitate a fraud, scheme or other illegal plan. In order for a person to be convicted under this statute, the government must prove beyond a reasonable doubt each of the following five elements:
 - a. Any person who

- b. Intentionally
- c. Devises a fraudulent scheme, and
- d. Uses or causes the mails to be used (Postal Service or private/commercial interstate carrier)
- e. In furtherance or in support of the scheme.

American Automotive Accessories, Inc. v. Fishman, 175 F.3d 534, 542 (7th Cir. 1999); Viriden v. Graphics One, 623 F.Supp. 1417, 1422-1423 (C.D. Cal. 1985). If these elements are proven and the defendant is found guilty, he/she can be fined up to \$250,000 per count or imprisoned up to 20 years, or both. If the victim or target of the scheme is a financial institution, the fine can be up to \$1,000,000 or imprisonment of up to 30 years, or both.

3. Proof of the Elements of Mail Fraud

- a. What is "intentionally"? An action is proved to have been taken with specific intent if it is proven that "the scheme was reasonably calculated to deceive persons of ordinary prudence and comprehension". Viriden, supra, at 1422. How can intent be proven? Intent is proven by showing the scheme itself. The scheme may utilize an affirmative misrepresentation of fact, or may instead involve the deceitful concealment of material facts. Viriden, supra.
- b. What is a "fraudulent scheme"? A fraudulent scheme is the intentional presentation of falsehoods as if true, with the goal of causing someone to part with something of value under false pretenses. The words "to defraud" commonly refer to "wronging one in his property rights by dishonest methods or schemes, and usually signify deprivation of something of value by trick, deceit, chicanery or overreaching." McNally v. United States, 483 U.S. 350 (1987). Schemes depriving people from controlling their assets by withholding information necessary to make discretionary economic decisions falls within the statute. United States v. Carlo, 507 F.3d 799 (2d Cir. 2007). Does the misrepresentation have to be material to the fraud? Under the holding of Neder v. United States, 527 U.S. 1 (1999), the answer is yes. The Supreme Court pointed out that the well-settled meaning of "fraud" required a misrepresentation or concealment of material fact, and therefore, the materiality of the falsehood is an element of the federal mail fraud statute. Neder, supra at 22 - 23. A matter is material if "(a) a reasonable man would attach importance to its existence or nonexistence in

determining his choice of action in the transaction in question; or (b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.” Restatement (Second) of Torts § 538 (1976). A misrepresentation “must have the purpose of inducing the victim of the fraud to part with the property or undertake some action that he would not otherwise do absent the misrepresentation or omission.” United States v. Daniel, 329 F.3d 480, 487 (6th Cir. 2003); (it is material if it has a tendency to influence or is capable of influencing a decision) Neder, supra at 16; United States v. McAuliffe, 490 F.3d 526 (6th Cir. 2007), cert. denied 2007 U.S. LEXIS 11620 (2007). Whether or not a victim in fact relied upon a defendant’s false representation is irrelevant in fraud cases. United States v. Ghilarducci, 480 F.3d 542 (7th Cir. 2007), cert. denied 2007 U.S. LEXIS 10281 (2007).

- c. In 1988, Congress expanded the definition of “scheme or artifice to defraud” when it enacted Title 18 U.S.C. §1346, which states: *“For the purpose of this chapter, the term ‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of honest services.”* Thus, no longer does the scheme have to involve the taking of money or tangible personal property, as previously defined in McNally, supra. This statute can now be used to reach schemes which deprive the public of the honest services of public officials. However, the Circuits are split on their willingness to apply the Mail Fraud statute to cases involving dishonest services.
- d. What act “causes the mails to be used”? It is not necessary to show that the defendant personally used the mail services, but only that the defendant caused the mail services to be used by “acting with the knowledge that their use would follow in the ordinary course of business, or where such use could reasonably be foreseen.” American Automotive Accessories, Inc. v. Fishman, 175 F.3d 534, 542 (7th Cir. 1999), citing United States v. Alexander, 135 F.3d 470, 474-475 (7th Cir. 1998); see also, United States v. Wicker, 80 F.3d 263 (8th Cir. 1996); United States v. Fox, 69 F.3d 15 (5th Cir. 1995). Thus, evidence will be sufficient to meet this element of the offense when it can be proven either that:
 - 1) the defendant personally used the mails for the

- purpose of executing a scheme to defraud; or
- 2) the defendant acted knowing that the use of the mails would follow in the ordinary course of business; or
- 3) even when the use of the mails was not intended, such use was reasonably foreseeable.

Virden v. Graphics One, 623 F.Supp. 1417, 1422 (C.D. Cal. 1985), citing United States v. Garner, 663 F.2d 834, 838 (9th Cir. 1981), cert. denied, 456 U.S. 905 (1982); see also American Automotive Accessories, Inc., *supra*, at 542.

Each mailing which is in furtherance of the scheme is a separate offense, and will support a separate charge. United States v. McClelland, 868 F.2d 704 (5th Cir. 1989). The mailing can be either interstate or intrastate (Article I, section 8, United States Constitution).

- e. What is “in furtherance or in support of the scheme”? The mailings do not have to be an essential part of the planned scheme, but they must be made for the purpose of executing the scheme. Virden v. Graphics One, 623 F.Supp. 1417, 1423 (C.D. Cal. 1985). The mailings do not have to occur at the time of the original fraud. If the defendant is engaged in an ongoing scheme, and the mailings are both reasonably foreseeable and allow the scheme to continue undetected, the defendant can be charged with mail fraud for each mailing that occurs, even if the mailings occur years after the original fraud. United States v. Lane, 474 U.S. 438, 451-2 (1986) (mailings are within the five-year statute of limitations if their purpose is “to lull the victims into a false sense of security, postpone their ultimate complaint to the authorities, and therefore make the apprehension of the defendants less likely than if no mailings had taken place”); Schmuck v. United States, 489 U.S. 705 (1989) (in odometer rollback scheme, later mailings of titles by state transportation department were reasonably foreseeable and facilitated the continuance of the scheme).
4. Title 18 U.S.C. § 1343. Officially titled “Fraud by Wire, Radio, or Television”, this statute is commonly referred to as the “Wire Fraud Statute”. It provides:
- a. *“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television*

communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

- b. Elements of Title 18 U.S.C. § 1343. Cases consistently state that the elements of Title 18 U.S.C. §§ 1341 and 1343 are the same. American Automotive Accessories, Inc. v. Fishman, 175 F.3d 534, 542 (7th Cir. 1999); United States v. Ames Sintering Co., 927 F.2d 232, 234 (6th Cir. 1990); United States v. Puckett, 692 F.2d 663, 669 (10th Cir.), cert. denied, 459 U.S. 1091 (1982). One substantial difference, however, is that, to be indictable under Section 1343, the wire transmission must have been interstate. Puckett, supra. Intrastate telephone calls and transmissions do not violate the statute.
- c. The communication required under the statute does not have to be directed to the victim of the fraudulent scheme, and the defendant does not have to be the person who made the wire communication if he participated in devising the scheme to defraud and the use of interstate wires was foreseeable. United States v. Puckett, 692 F.2d 663, 669 (10th Cir. 1982), cert. denied, 459 U.S. 1091 (1982). The scheme does not have to actually succeed, the victim does not have to actually suffer a loss, nor does the defendant have to secure a gain to be prosecuted under this statute, and the communication itself does not have to actually further the scheme. United States v. Ames Sintering Co., 927 F.2d 232, 235 (6th Cir. 1990). Interstate and international telephone calls seeking a person to execute a horse to complete an insurance scheme supported wire fraud convictions. United States v. Lindemann, 85 F.3d 1232 (7th Cir. 1996), cert. denied, 519 U.S. 966 (1996). Similarly, interstate telephone calls made by patients to schedule appointments with a medical doctor who fraudulently treated them for infertility were properly indicted as wire fraud charges. United States v. Jacobson, 1993 U.S. App. LEXIS 22534 (4th Cir. 1993), cert. denied, 511 U.S. 1069 (1994). Finally, as with the Mail Fraud statute, wire transmissions designed to lull a victim into complacency, thereby keeping him from discovering the fraud and contacting the authorities, can be charged even though they occur after the defendant has obtained

something of value from the victim. In effect, these “lulling” wires extend the five-year statute of limitations in a wire fraud case. See, e.g., United States v. Rogers, 9 F.3d 1025 (2d Cir. 1993).

D. EPO #23: IDENTIFY THE ELEMENTS OF THE NATIONAL STOLEN PROPERTY ACT, TITLE 18 U.S.C. § 2314

1. Title 18 U.S.C. § 2314. The National Stolen Property Act, commonly referred to as the “Interstate Transport of Stolen Property” or “ITSP”, was enacted to federalize thefts and frauds that crossed state lines. In 1990, the statute was amended to encompass the transportation of stolen goods through foreign commerce. The statute provides as follows:
 - a. *“Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5000 or more, knowing the same to have been stolen, converted or taken by fraud; or*
 - b. *“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of \$5000 or more; or*
 - c. *“Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or*
 - d. *“Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler’s checks bearing a forged countersignature; or*
 - e. *“Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof –*
 - f. *“Shall be fined under this title or imprisoned not more than ten years, or both.*

- g. *“This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.”*
2. Title 18 U.S.C. § 2314 – Generally. Congress enacted the National Stolen Property Act (hereinafter, “ITSP”) pursuant to its authority under the Commerce Clause. In general, its provisions prohibit: transporting goods known to be stolen, converted or fraudulently obtained across state lines or our national boundaries; inducing or causing people to travel, or transporting them, across state lines or our national boundaries in furtherance of a fraudulent scheme; and transporting forged securities and traveler’s checks across state lines or our national boundaries. The statute converts what were once solely state and local crimes into federal violations, thereby supplementing and enhancing local law enforcement efforts by extending federal law enforcement jurisdiction.
3. Elements of Title 18 U.S.C. § 2314. The statute is comprised of five distinct provisions which together proscribe activities involving the transportation of certain specified items and persons across state lines and in interstate commerce. Each such provision requires its own elements of proof and will be considered in order of appearance:
4. Paragraph One - The Elements:
- a. Transportation in interstate or foreign commerce . . .
 - b. Of any goods, wares, merchandise, securities or money valued at \$5000 or more. . .
 - c. Knowing the same to have been stolen, converted or taken by fraud.
5. Paragraph One – Proving the Elements:
- a. Interstate or Foreign Commerce. Generally, a prosecution for violation of ITSP will not lie unless the property or moneys obtained by theft or fraud have been transported or transferred across state lines or in foreign commerce. Transportation or transfer of such items within a single state does not satisfy the requirements of the statute. It is the transport or transfer of the stolen or fraudulently obtained property or moneys from one state to another or between the

United States and a foreign country that violates the statute and confers federal jurisdiction over the crime. Thus, a thief who steals property in Georgia and then transports it to Florida commits a violation of ITSP. If instead he remains in Georgia with the proceeds of his theft, the suspect has violated state law, but not federal law.

- b. Transport, transfer or transmit. The means by which the stolen or fraudulently obtained property or money is transported, transferred or transmitted across state lines is not material. It is sufficient that the defendant transported the item personally or *caused* the item to be transported, transferred or transmitted in interstate or foreign commerce. Pereira v. United States, 347 U.S. 1 (1954). Thus, reliance on a private or commercial courier, or use of the U.S. Mail, thereby causing the interstate transport of the stolen merchandise, satisfies this element of the statute. Furthermore, when an act is performed with knowledge the mail will be used in the ordinary course of business, or where such use can be reasonably foreseen, even though not actually intended, the person “causes” the mail to be used. Likewise, interstate wire transfers of funds obtained through theft or fraud constitute violations of ITSP. The courts have consistently held that ITSP can be charged concurrently with the Mail Fraud and Wire Fraud statutes because they demand proof of at least one different element. Accord Pereira at 9. With regard to foreign commerce, ITSP makes it a crime to transport to the United States goods stolen in a foreign country, even if they do not subsequently travel in interstate commerce once in country. United States v. Davis, 608 F.2d 555 (5th Cir. 1979). Further, property or moneys obtained by fraud or theft in the United States and then transported or transmitted overseas violate ITSP. The Second Circuit has held that stolen property transported to a restricted customs area by an exporter and placed in the possession of the shipping company was “in foreign commerce” though no borders had been crossed. United States v. Ajlouny, 629 F.2d 830 (2d Cir. 1980), cert. denied, 449 U.S. 1111 (1981).
- c. Value of \$5000 or more. To sustain a conviction under ITSP, the government must prove the stolen or fraudulently obtained property transported in interstate or foreign commerce is valued at \$5000 or more. According to the legislative history of the statute, the purpose of this limitation is to avoid over-extending the resources of the federal government by leaving prosecutions of less substantial thefts

and frauds to the states. In addressing the valuation element of ITSP, the courts refer initially to 18 U.S.C. § 2311, which defines “value” as “face, par, or market value, whichever is the greatest” For items with no face or par value, the courts have generally defined market value as “the price a willing buyer would pay a willing seller either at the time and the place that the property was stolen or at any time during the receipt or concealment of the property.” United States v. Robinson, 687 F.2d 359, 360 (11th Cir. 1982); accord, United States v. Ruhe, 191 F.3d 376 (4th Cir. 1999). In applying this standard, the courts look to the particular facts of each case and pose the question: in what type of transaction would the person from whom the property was stolen have engaged? If the victim was a wholesale merchant, the value for purposes of ITSP is the wholesale market price; if the victim was a retail merchant, the value of the stolen property is the retail market price. Robinson at 360; United States v. Willette, 764 F.Supp. 759 (N.D.N.Y. 1991). Where there is no established market for the stolen item, courts have relied on the prices paid among those dealing in the stolen property, referring to this as the “thieves market”. See, United States v. Berkitt, 619 F.2d 649, 658 (7th Cir. 1980). Finally, each interstate or foreign transport or transfer of an item valued at \$5000 or more can be charged as a separate count of ITSP.

- d. Aggregation. The definition of “value” set forth in 18 U.S.C. 2311 concludes with the statement: “. . . and the aggregate value of all goods, wares, and merchandise, securities and money referred to in a single indictment shall constitute the value thereof.” In Schaffer v. United States, 362 U.S. 511 (1960), the Supreme Court considered whether individual shipments of stolen goods in interstate commerce valued at less than \$5000 could be aggregated to attain the jurisdictional minimum specified by ITSP. Relying on a “sensible reading of the statute” the Court affirmed the notion that “where the shipments have enough relationship so that they may properly be charged as a single offense, their value may be aggregated.” Schaffer at 517. In Schaffer, the aggregated value was based on series of shipments to a particular defendant. Where the shipments were spread among more than one person, the Fourth Circuit aggregated the value of the individual shipments once the government proved they were part of a “common design” (i.e., single plan or agreement). Andrews v. United States, 108 F.2d 511 (4th Cir. 1939).

- e. Knowledge. To obtain a conviction under ITSP, the government must show that the defendant knew that the items he transported or caused to be transported in interstate or foreign commerce were stolen, embezzled, or obtained by fraud. The government is not required to prove that the defendant knew, foresaw, or intended that the stolen items were or would be transported in interstate or foreign commerce. The courts have generally held that the jury may infer that a person in possession of recently stolen property knew the property was stolen, unless such possession is satisfactorily explained. Barnes v. United States, 412 U.S. 837, 845 (1973); see also, United States v. Cowden, 545 F.2d 257 (1st Cir. 1976), cert. denied, 430 U.S. 909 (1977); United States v. McGregor, 529 F.2d 928 (9th Cir. 1976).
- 6. Paragraph Two – The Elements: The second paragraph of ITSP makes it a federal crime to cause potential victims (or the agent of the victim) of a fraudulent scheme to travel in interstate or foreign commerce to execute or conceal the scheme. This provision of the statute is referred to as prohibiting “travel fraud”. In its most basic application, a con artist who misleads his victim in a face-to-face encounter can still be charged with ITSP if the victim or the victim’s agent crossed state lines or traveled into or out of the United States to investigate or learn of the fraudulent offer and ultimately handed his money or property to the defendant. See, e.g., United States v. Steffen, 251 F.3d 1273 (9th Cir. 2001). The elements of this second paragraph are:
 - a. Transportation of or inducement of a person to travel in interstate or foreign commerce . . .
 - b. For the purpose of defrauding that person of money or property valued at \$5000 or more.
- 7. Paragraph Two – Proving the Elements:
 - a. Transport or induce to travel in interstate or foreign commerce. This element of ITSP is met if a potential or actual victim of a fraud scheme travels in interstate or foreign commerce in connection with the scheme. It is not necessary to prove the victim actually parted with their money or property; instead it is sufficient if the defendant induced them to travel in an effort to defraud them. Likewise, the government need not prove that the money or property lost by the victim to the defendant traveled in interstate or foreign commerce. United States v. Benson, 548 F.2d 42, 46 (2d Cir. 1977). Thus, where a con artist induces his next door neighbor to travel out of state to view certain real estate parcels offered in a fraudulent scheme, he

can be charged with ITSP whether or not the neighbor invests; further, he can be charged with ITSP based on the interstate travel of the neighbor even if the neighbor does not invest until he returns home and hands his funds to the con artist. (Of course, the U.S. Attorney's decision whether or not to prosecute the case will generally rest on the amount of the *actual* loss suffered by the victims of the scheme).

- b. To Defraud of \$5000 or More. As with the Mail Fraud and Wire Fraud statutes, the government must prove the defendant's intent to defraud. See the prior discussion concerning that element under the Mail Fraud statute above. As to meeting the jurisdictional amount of \$5000 or more, see the discussion concerning the valuation element for Paragraph One above.
 - c. Travel Fraud Cases. The following are examples of cases in which defendants have been charged with "travel fraud" under ITSP:
 - 1) United States v. Jacobson, 1993 U.S. App. LEXIS 22534 (4th Cir. 1993), cert. denied, 511 U.S. 1069 (1994) - § 2314 violated by doctor who induced out-of-state patients to travel to his Virginia clinic for fraudulent fertility treatments.
 - 2) United States v. Casperson, 773 F.2d 216 (8th Cir. 1985) – Travel fraud provision of ITSP violated through inducement of investors to travel across state lines in advance fee loan scheme.
 - 3) United States v. Biggs, 761 F.2d 184 (4th Cir. 1985) – Defendant committed travel fraud under ITSP by inducing Florida residents to visit coal mine in West Virginia for purposes of obtaining fraudulent investments.
8. Paragraph Three – The Elements: The third paragraph of ITSP prohibits the transportation of falsely made, forged, altered or counterfeited securities or tax stamps in interstate and foreign commerce. The government must prove the following elements:
- a. Transport in interstate or foreign commerce . . .
 - b. Falsely made, forged, altered or counterfeited securities or tax stamps . . .
 - c. With unlawful or fraudulent intent . . .
 - d. Knowing the securities or tax stamps to be forged, altered or counterfeited.

9. Paragraph Three – Proving the Elements:

- a. Interstate or Foreign Commerce. See discussion above concerning this element under Paragraph One. In addition, as discussed below, this section of ITSP covers the negotiation of forged out-of-state checks. Thus, a defendant who makes payment with a falsely made or forged check drawn on an out-of-state bank can be charged with ITSP based on the subsequent interstate transfer of the check in the bank collection process. Pereira v. United States, 347 U.S. 1 (1954). Further, each act of transporting the subject securities in interstate or foreign commerce constitutes a single offense under ITSP. Thus, a defendant who transports several forged checks or securities at one time may be charged with only one count of ITSP. It is not the number of false securities, but rather the number of state lines crossed that determines the number of counts to be charged. United States v. Frierson, 2000 U.S. App. LEXIS 27939 (10th Cir.). Alternatively, the government may charge as separate counts of ITSP each negotiated check that enters interstate commerce to be processed through the banking system. See, e.g., United States v. Flick, 516 F.2d 489 (7th Cir. 1975), cert. denied, 423 U.S. 931 (1975); United States v. White, 524 F.2d 1249 (5th Cir. 1975), cert. denied, 426 U.S. 922 (1976).
- b. Falsely made, forged, altered or counterfeited securities. The following have been deemed “securities” for purposes of the third paragraph of ITSP:
 - 1). Checks – see citations above; also, see below, this paragraph of ITSP does not apply to **checks with forged endorsements**;
 - 2). Quit Claim Deeds – United States v. Speidel, 562 F.2d 1129 (8th Cir. 1977), cert. denied, 435 U.S. 915 (1978);
 - 3). Money orders – United States v. Weisser, 737 F.2d 729 (8th Cir. 1984), cert. denied, 469 U.S. 1158 (1985);
 - 4). Motor vehicle titles with fraudulent odometer readings – Moskal v. United States, 498 U.S. 103 (1990);
 - 5). Stocks and bonds – United States v. Anderson, 532 F.2d 1218 (9th Cir. 1976), cert. denied, 429 U.S. 839 (1976); United States v. Taylor, 802 F.2d 1108 (9th Cir. 1986), cert. denied, 479 U.S. 1094 (1987).

The courts have held that airline tickets, credit cards, credit card slips, and leases are not “securities” under ITSP. In addition, the final paragraph of Section 2314 states that the statute’s provisions do not apply to counterfeit obligations and securities of the United States or any foreign government, nor falsely made or counterfeit foreign currency. (See Title 18 U.S.C. § 8 for the statutory definition of “obligation or other security of the United States”). The reason for this exclusion of United States obligations and securities from the provisions of ITSP lies in the fact that “trafficking in counterfeits, forgeries and spurious representations of [these instruments] is made criminal elsewhere in the United States Code by anti-counterfeiting statutes”, such as Title 18 U.S.C. § 471. United States v. Robie, 166 F.3d 444, 454 (2d Cir. 1999). Finally, it should be noted that the language “falsely made, forged, altered or counterfeited securities” has been construed by the courts to not include **checks with forged endorsements**. See, e.g., United States v. Tyson, 690 F.2d 9 (1st Cir. 1982) (finding the forging of an endorsement on an otherwise valid security [here, a check] does not render the security falsely made, forged, altered, or counterfeited for purposes of paragraph three of ITSP). That language however, has been held to apply to checks signed by a maker using a fictitious name, United States v. Seay, 386 F.Supp. 550 (E.D. Ill. 1974) aff’d, 518 F.2d 646 (7th Cir. 1974) (per curiam), cert. denied, 423 U.S. 995 (1975); checks drawn on an account opened with a fictitious name, United States v. Metcalf, 388 F.2d 440 (4th Cir. 1968); checks bearing a forged signature of an authorized signatory to the account, United States v. Fletcher, 444 F.2d 619 (10th Cir.1971); checks drawn on closed accounts, United States v. Phillips, 869 F.2d 1361(10th Cir. 1988), cert. denied, 490 U.S. 1069 (1989); and checks bearing the actual signature of a person not authorized to act as a signatory on the account, United States v. Fontana, 948 F.2d 796 (1st Cir. 1991). At least one court noted that a check with a forged endorsement would fall under the provisions of the first paragraph of ITSP prohibiting the interstate transport of property stolen, converted or taken by fraud, provided the \$5000 valuation requirement was met. Tyson at 16.

- c. Fraudulent Intent. The government must establish that the defendant transported the forged or counterfeit check or security with unlawful or fraudulent intent. The requisite intent may be established through the defendant’s own

statements and/or his participation in the scheme to transport or negotiate the securities. See, United States v. Sheridan, 329 U.S. 379 (1946) (requisite intent under predecessor to Section 2314 was met by proof that defendant cashed check drawn on out-of-state bank which he knew to be forged and which entered interstate commerce for collection); United States v. Frierson, 2000 U.S. App. LEXIS 27939 (10th Cir. 2000) (statements to witness and on audiotape concerning defendant's knowledge and evidence of his participation in scheme established requisite intent).

- d. Knowledge of Forgery or Counterfeit. To sustain a conviction under this paragraph of ITSP, the government must prove the defendant knew the security transported in interstate or foreign commerce was forged or counterfeited at the time of its transportation. See United States v. Resurreccion, 978 F.2d 759 (1st Cir. 1992) (defendant's knowledge that checks were counterfeit established in part by his statements to Customs agents indicating he hoped to obtain only 40% to 80% of the face value of certified checks drawn on a certain foreign bank). It is not necessary to prove in the case of a forged security that the defendant forged the endorsement himself; the government need only show that he knew the instruments he cashed had been forged. United States v. Solomon, 422 F.2d 1110 (7th Cir. 1970), cert. denied, 399 U.S. 911 (1970).

- 10. Paragraph Four – The Elements: In 1968, at the prodding of the travel industry, Congress amended ITSP to prohibit the transportation in interstate or foreign commerce of traveler's checks bearing forged countersignatures. The elements of this provision are:

- a. Transporting in interstate or foreign commerce . . .
- b. Any traveler's check bearing a forged countersignature . . .
- c. With unlawful or fraudulent intent.

- 11. Paragraph Four – Proving the Elements:

- a. Interstate or Foreign Commerce. See above for prior discussions on this jurisdictional requirement.
- b. Forged Traveler's Checks. Interstate transport of traveler's checks with forged countersignatures violates this provision of ITSP. Though the plain language of the statute suggests the traveler's check must be forged and then transported in interstate commerce, the courts have found this provision violated by defendants who stole the traveler's checks,

transported them over state lines, and then forged them to negotiate them in the destination state. See, United States v. Bates, 1999 U.S. App. LEXIS 221 (4th Cir. 1999); United States v. McGovern, 661 F.2d 27 (3d Cir. 1981), cert. denied, 454 U.S. 1157 (1982).

- c. Unlawful or Fraudulent Intent. This element has not spawned much discussion by the courts as it pertains to the traveler's check provision of ITSP. It appears the defendant's unlawful or fraudulent intent is inferred from his possession and/or his negotiation of the forged documents.
12. Paragraph Five – The Elements: The final paragraph of ITSP prohibits the interstate transport of any tool, implement or other items used to counterfeit, alter or falsely make any security or tax stamps. While there are few reported decisions construing the elements of this proviso, the plain language of this section suggests that items used to affix authorized signatures, impress official seals or certifications, or imprint face amounts to checks and other securities would be covered if transported in interstate or foreign commerce. One court held that the paper on which a partially completed security was printed did not constitute a tool or implement within the meaning of this paragraph of ITSP.
13. Venue for Violations of Title 18 U.S.C. §§ 1341, 1343 and 2314. Venue for violations of the Mail Fraud statute, Wire Fraud statute and ITSP is governed by Title 18 U.S.C. § 3237, which provides in pertinent part: "Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, . . . may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves."

As a consequence of the foregoing, mail fraud cases may be brought in the district where the subject mail matter is placed in the mail stream, any district through which it travels, or the district in which it is received by the addressee; wire fraud cases may be brought in the districts from which the transmission was sent, through which it passed, and in which it was received; and ITSP may be charged in the districts from which the stolen items or victims originated, through which they traveled, and in which they completed their journey. As a practical matter, however, the stated policy of the Department of Justice is to bring charges under these three statutes at their beginning and ending points, rather than in the districts through which the mail, transmission, victims or property merely passed.
14. Miscellaneous information concerning Mail and Wire Fraud Statutes

- a. Mail Fraud, Wire Fraud and ITSP are qualifying racketeering acts under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), Title 18 U.S.C. § 1961, United States v. Dischner, 974 F.2d 1502 (9th Cir. 1992), cert. denied, 507 U.S. 923 (1993).
- b. Under the Interstate Travel in Aid of Racketeering Act ("ITAR"), Title 18 U.S.C. § 1952, it is unlawful to travel, use the mails, or use any facility in interstate or foreign commerce to promote gambling, untaxed liquor, drugs, prostitution, arson, bribery, or crimes of violence.
- c. Most importantly, all three statutes are "specified unlawful activities" for purposes of the Money Laundering statutes, Title 18 U.S.C. §§ 1956 and 1957. Thus, any use of the illegal proceeds obtained through violations of the Mail Fraud, Wire Fraud and ITSP statutes which furthers continuing violations or conceal those crimes can be charged under various sections of the Money Laundering statutes. The penalties for violations of Sections 1956 and 1957 under the Federal Sentencing Guidelines are substantial; consequently, these charges serve as valuable bargaining chips in negotiating plea agreements with defendants.

VII. FALSE STATEMENTS / THEFT / EMBEZZLEMENT

A. RAPPORT AND OPENING STATEMENT

This course is designed for uniformed officers. It covers one EPO identical to the CITP program, to wit: EPO #11, Identify the elements of Title 18 U.S.C. § 1001. **For the false statements section of this course, the instructor should refer to EPO #11.**

Title 18 U.S.C. § 641 makes it unlawful for anyone to commit a theft, embezzlement or conversion of property belonging to the United States. The statute reads:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$1000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Under Title 18 U.S.C. § 3571, the maximum fine for the felony offense is \$250,000, and the maximum fine for the misdemeanor is \$100,000.

B. ENABLING PERFORMANCE OBJECTIVES (EPO)

EPO #11: Identify the elements of Title 18 U.S.C. § 1001.

EPO #24: Identify the elements of Title 18 U.S.C. § 641.

C. EPO #24: IDENTIFY THE ELEMENTS OF TITLE 18 U.S.C. § 641

1. Title 18 U.S.C. § 641 is a comprehensive statute designed to address four crimes which, at common law, were separate, but by this statute have been combined: Embezzlement, theft, conversion, and receiving stolen property. In each instance, for the offense to have federal jurisdiction, the item that is wrongfully appropriated must have in fact belonged to the United States. United States v. Tailan, 161 F.3d 591 (9th Cir. 1998). Items stolen from a post or Navy exchange are government property. United States v. Towns, 842 F.2d 740 (4th Cir.),

cert. denied, 487 U.S. 1240 (1988); Tailan, *supra*. Postage stamps that are manufactured under a government contract come within the terms of the statute. United States v. Robie, 166 F.3d 444, 452-453 (2d Cir. 1999).

- a. As an example, suppose a government employee is issued a government-owned vehicle that is to be used only for official business. One weekend, while his private vehicle is being repaired, the employee uses the government vehicle to take his wife shopping and out to dinner. What is the crime? Conversion. Is there any intent to permanently deprive the government of the property? The answer is no; however, it was a wrongful use of property belonging to the United States.
 - b. Assume that instead of taking the government vehicle for a night out with his spouse, the same employee sells the car to a friend who knows that it is the employee's government vehicle and that the employee lacks the authority to sell the car. What are the crimes? In this situation, there is theft by the employee, and receipt of stolen property by the friend. When a person responsible for processing and depositing income tax payment checks takes one, properly endorses the check, but then transfers the money from the proper government account to her personal account, the crime is embezzlement.
2. Theft of government property is the wrongful appropriation of government property by a person who has no lawful right to such property. The elements of theft of government property are:
 - a. Defendant knowingly;
 - b. Takes, carries away, or converts to the use of another;
 - c. Something of value belonging to the United States, or made under a contract with the United States.
3. United States v. Forman, 180 F.3d 766 (6th Cir. 1999). It is not necessary that the defendant know the stolen item belongs to the United States; the prosecution need only prove that the defendant knew that he was taking something that did not belong to him, and that in fact, the item taken belongs to the United States. United States v. Crutchley, 502 F.2d 1195, 1201 (3d Cir. 1974). In order to prove that an item belongs to the United States, the government must prove that it had "title to, possession of, or control over" the item. United States v. Tailan, 161 F.3d 591, 592 (9th Cir. 1998), *quoting* United States v. Long, 706 F.2d 1044, 1049 (9th Cir. 1983).
4. In the case of United States v. Robie, 166 F.3d 444 (2d Cir. 1999), the

items stolen were misprinted postage stamps manufactured by a private printer under a government contract. The court found that, due to the contract terms and the supervision that was maintained over all aspects of the printing process by the U.S. Postal Service, including maintaining strict control over all waste product, the stolen misprinted stamps were indeed property of the United States or any property made or being made under contract for the United States or any department or agency thereof, and thus the theft was properly charged under this statute.

5. When the crime alleged is a felony, one additional element must be proven: the value of the stolen item exceeds \$1,000. In Robie, *supra*, the primary issue was whether stolen misprinted stamps, which were never issued and scheduled for destruction, had a value reaching the felony level. There was substantial evidence that Robie had been able to dispose of the misprinted Richard Nixon stamps for over \$20,000; however, the court said that the stamps could not be valued by the price that was obtained in a "thieves market" because the value had to be set on the date of the theft, not on the date of the sale of the item. In the end, the court determined that the jury was permitted to infer that the stolen stamps had a value greater than their combined face value of \$51.20, and that the jury's finding on this element was supported by the evidence. Id. at 449-452.
6. Where it is reasonable from the facts for a defendant to believe that the government has abandoned property, and the government cannot prove otherwise, a charge of theft of government property will not succeed. Morrisette v. United States, 342 U.S. 246 (1952).
7. Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted, or into whose hands it has lawfully come. The original taking of the property is lawful, or done with the express or implied consent of the owner, but once the property is lawfully acquired, the defendant fraudulently applies the money or property to another, illegal use. The elements of embezzlement are:
 - a. The money or property belongs to the United States or an agency thereof;
 - b. The money or property came into the possession or care of the defendant lawfully;
 - c. The defendant fraudulently appropriates the money or property to his/her own use or the use of others; and
 - d. The defendant does so knowingly and willfully with the intent to either temporarily or permanently deprive the United States of the use of the money or property so taken.
8. Note that with embezzlement, the original acquisition of the property or money is lawful; there is no fraud or scheme or crime committed in the

original entrustment of the money or property. It is only after the entrustment occurs that the defendant begins the fraud. The defendant must be proven to know that the money or property does not belong to the defendant, and that knowing this fact, the defendant deliberately uses the item for his/her own purpose, either temporarily or permanently depriving the government of the use of the item. If the crime is alleged to be a felony, the government must also prove that the value of the property embezzled is over \$1,000.

9. Criminal conversion is the wrongful deprivation of goods or personal property belonging to another. It includes the unlawful assumption and exercise of the right of ownership over goods or personal property belonging to another, the alteration of their condition, or the exclusion of the owner's rights. The property can be converted either permanently or for an indefinite period of time. Conversion does not require an intent to keep the property, nor does it require a wrongful taking. Conversion may include misuse or abuse of property, as well as use in an unauthorized manner or to an unauthorized extent. The elements of conversion are:
 - a. Wrongful deprivation, use or abuse;
 - b. Of goods or personal property;
 - c. Belonging to the United States.
10. Conversion of government property requires some act inconsistent with the government ownership rights in the property. The conversion may include some abuse or misuse of property, or use of government property in some unauthorized manner. There is no requirement that the defendant intend to keep the property or deprive the government of the property. There is also no requirement that the taking of the property be wrongful. If the value of the property is over \$1,000, the crime is a felony.
11. What acts do not qualify as conversions of government property? In United States v. Wilson, 636 F.2d 225 (8th Cir. 1980), Wilson used a government secretary to type personal work for him relating to a business he was establishing. Many weeks, almost 100% of the secretary's time was spent doing Wilson's personal work. Wilson told the secretary that she was not to allow his personal work to interfere with government work. No attempt was made to conceal what was happening. This all took place during a period when there was almost no government work to be done, due to a reorganization. On these facts, the court held that the government had not shown that Wilson possessed the intent required for a conviction under Title 18 U.S.C. § 641, because he had not interfered with the rights of the government to the secretary's work.

12. Receipt of stolen property can be charged when a person knowingly receives or buys stolen property with intent to keep for his or her own use or gain (i.e., to sell for profit). In addition, the statute allows a person to be charged with receipt of stolen property when that person knowingly receives property that the person knows is stolen. The person receiving the stolen property does not need to know that the stolen property belongs to the United States, but only that the property is stolen. If the value of the property is over \$1,000, the crime is a felony.

VIII. SUMMARY

A. REVIEW OF PERFORMANCE OBJECTIVES

Each of the following sessions is taught as an individual course. The Instructor must remember to cover all of the material contained within that individual course during the time assigned for that course.

B. REVIEW OF TEACHING POINTS

The Instructor should refer to each EPO and session for the teaching points to be reviewed at the end of that session.

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18 U.S.C. § 1513

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18 U.S.C. § 641

TEST ITEM CONTROL SHEET (TICS)

COURSE NUMBER: 1091
TITLE: Federal criminal law

COURSE

Point of contact and extension: (b)(7)(C),(b)(6) Date: March 10, 2008

Instructions: If a course is taught in sessions, put the EXAM number (E01, E02, E03, etc...) that the EPO will be tested on in the EDT. If all EPO's are tested on one exam, place an X in each box instead of the exam number. Using the test item numbers EAD has provided, complete the table below. Every EPO tested by multiple choice exam must be represented in each set with **one** test item. If an EPO is tested by PE or not tested at all put PE or NA in that corresponding EPO row in the program box. A TICS and EDT is required for all courses tested at all FLETC locations. Use more than one form if necessary.

Exam Distribution Table (EDT)

EPO	Set A	Set B	Set C	Set D	Set E	CITP	ICE_D	LMPT	UPTP
1.	I02891	I02899	I05254	I05154	I03086	E01	E02	E05	E05
2.	I02895	I02897	I06477	I06478	I06479	E01	E02	E05	E05
3.	I00742	I06480	I06481	I06482	I06483	E01	E02	E05	E05
4.	I02999	I06484	I06485	I06486	I06487	E01	E02	E05	E05
5.	I03000	I01235	I01237	I01233	I06488	E01	E02	E05	E05
6.	I01330	I01335	I01336	I06227	I06489	E01	E02	E05	E05
7.	I01331	I01337	I02270	I06228	I06490	E01	E02	E05	E05
8.	I03443	I03444	I03432	I05715	I05716	E01	E02	E05	E05
9.	I02204	I02208	I05261	I05262	I06491	E03	E02	NA	NA
10.	I02203	I02205	I02206	I02207	I05260	E03	E02	NA	NA
11.	I02193	I02192	I02191	I06492	I06493	E03	E02	E05	E05
12.	I07049	I01780	I01765	I05243	I06494	E03	NA	NA	NA
13.	I07575	I01779	I01776	I01775	I01761	E03	NA	NA	NA
14.	I01755	I01771	I07050	I05543	I01772	E03	NA	NA	NA
15.	I01756	I01764	I05245	I05244	I01763	E03	NA	NA	NA
16.	I01754	I05247	I01760	I05246	I06495	NA	NA	NA	NA

17.	I07048	I01757	I01777	I06496	I06497	E03	NA	NA	NA
18.	I01788	I01791	I05454	I01795	I01790	E03	NA	E05	E05
19.	I02941	I02946	I05319	I06498	I06499	E03	NA	NA	NA
20.	I02949	I05320	I05408	I05409	I05410	E03	NA	NA	NA
21.	I05411	I05412	I05413	I05321	I02947	E03	NA	NA	NA
22.	I02195	I02196	I01784	I06500	I06501	E05	NA	NA	NA
23.	I06502	I06503	I06504	I06505	I06506	E05	NA	NA	NA
24.	I02137	I02138	I02139	I06507	I06508	E03	NA	E05	E05

EPO	Set A	Set B	Set C	Set D	Set E	ICITP	A_ BPOTP	A_ FAMTP	C_ NNSA_OST
1.	I02891	I02899	I05254	I05154	I03086	E01	E01	E02	E01
2.	I02895	I02897	I06477	I06478	I06479	NA	E01	E02	E01
3.	I00742	I06480	I06481	I06482	I06483	NA	E01	E02	E01
4.	I02999	I06484	I06485	I06486	I06487	E01	E01	E02	E01
5.	I03000	I01235	I01237	I01233	I06488	NA	E01	E02	E01
6.	I01330	I01335	I01336	I06227	I06489	NA	E01	NA	NA
7.	I01331	I01337	I02270	I06228	I06490	NA	E01	NA	NA
8.	I03443	I03444	I03432	I05715	I05716	NA	E01	NA	NA
9.	I02204	I02208	I05261	I05262	I06491	NA	NA	NA	NA
10.	I02203	I02205	I02206	I02207	I05260	NA	NA	NA	NA
11.	I02193	I02192	I02191	I06492	I06493	E01	NA	NA	NA
12.	I07049	I01780	I01765	I05243	I06494	NA	E01	NA	NA
13.	I07575	I01779	I01776	I01775	I01761	NA	E01	NA	NA
14.	I01755	I01771	I07050	I05543	I01772	NA	E01	NA	NA
15.	I01756	I01764	I05245	I05244	I01763	NA	E01	NA	NA
16.	I01754	I05247	I01760	I05246	I06495	NA	NA	NA	NA
17.	I07048	I01757	I01777	I06496	I06497	NA	E01	NA	NA
18.	I01788	I01791	I05454	I01795	I01790	E01	E01	NA	NA
19.	I02941	I02946	I05319	I06498	I06499	NA	NA	NA	NA
20.	I02949	I05320	I05408	I05409	I05410	NA	NA	NA	NA
21.	I05411	I05412	I05413	I05321	I02947	NA	NA	NA	NA
22.	I02195	I02196	I01784	I06500	I06501	NA	NA	NA	NA
23.	I06502	I06503	I06504	I06505	I06506	NA	NA	NA	NA
24.	I02137	I02138	I02139	I06507	I06508	NA	NA	NA	NA

Implementation Instructions for EAD:

Program Name	Date for item implementation	Use in all classes after class #	Special Instructions